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APPENDIX TO THE JOURNALS

OF THE

SENATE AND ASSEMBLY

OF THE

TWENTY-EIGHTH SESSION

OF THE

LEGISLATURE OF THE STATE OF CALIFORNIA.

Volume VIII.



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OF THE STATE OF CALIFORNIA

FOR THE YEAR 1880

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CONTENTS.

- 1—Testimony in the matter of the Senate Investigation of the Yosemite Valley Commissioners.
- 2—Testimony in the matter of the Assembly Investigation of the Yosemite Valley Commissioners.
- 3—Proceedings of the Committee on Judiciary regarding Railroad Tax Suits, etc.
- 4—Testimony in the matter of Contest of Election of John F. Sullivan, Contestant, vs. W. O. Banks, Respondent.
- 5—Report of Committee of Arrangements and Management of the Funeral of the late Governor Bartlett.
- 6—Communication from the State Controller to the Assembly.
- 7—Statement relative to Unpaid Claims of California against the United States.
- 8—In the matter of Assembly Bill No. 505.
- 9—In the matter of the Claim of Dennis Jordan.
- 10—Report of Committee on River, Harbor, and Coast Defenses.

IN THE MATTER

OF THE

Investigation of the Yosemite Valley Commissioners.

SENATE—TWENTY-EIGHTH SESSION.

TESTIMONY.

SACRAMENTO, MONDAY, February 4, 1889.

In the matter of the investigation of the Yosemite Valley Commissioners. Taken before the Senate Committee on Forestry and the Yosemite Valley and Mariposa Big Tree Grove.

Present: Meany, Chairman; Byrnes, Boggs, Hamill, and Roth.

JUDGE JAMES GRANT.

Sworn.

THE CHAIRMAN: Gentlemen, the witness is in the hands of the committee and everybody else. I do not want to be lawyer, judge, and everything else. Judge Grant will answer any question that is put to him.

MR. BYRNES: If there are any charges, we want them read, so as to know what we are going on.

MR. ROTH: Mr. Grant certainly knows the charges that have been made here.

THE CHAIRMAN: I do not know at whose instance Mr. Grant was summoned.

Question—At whose instance were you summoned? Answer—The names were given by the "Examiner."

MR. ROTH: Now, just ask him to go ahead and state all he knows about the transaction.

MR. HAMILL: Ask him if he has read the charges.

THE CHAIRMAN: There are no regular specific charges before the Senate.

THE WITNESS: I can tell you all that I know, whether you ask me the questions or not.

THE CHAIRMAN: Well, you have read this publication about the Commissioners? A. I have, sir.

Q. Well, we would like for you to tell us in any manner why the Commissioners are here, what you know, if anything. A. I would say that a year ago last June some of the Commissioners went up to the Yosemite to examine the new house, and when they returned—Dr. May was Secretary of the Commission—they made it a subject of conversation at the table at my house, and asked me if I would not bid for the hotel. I laughed and said that I had two or three hotels already; that I had two in Davenport and one in California, and did not care anything about a hotel, and that it would cost from \$12,000 to \$15,000 to furnish that hotel. Then, he says, that is the reason we want you to bid for it. "Well," says I, "Dr. Griffith, I will furnish you a bidder that will keep a first rate hotel at a reasonable price." After this Mr. Cook's barkeeper was at my house, and in a similar conversation he observed that if any person got that hotel besides Mr. Cook that the stage company would boycott him.

THE CHAIRMAN: What is his name, Judge? A. His name was Baxter.

Q. Dave Baxter? A. Dave Baxter. He is not here. He is Mr. Cook's barkeeper. I did not like to have a man telling me that sort of thing or telling it before me. I bid \$1,650 a year. Tyack bid \$1,800 a year, or \$2,100 a year, and the newspapers show that the Jew in San Francisco bid

\$1,500 a year. In consequence of this conversation with Mr. Baxter, I added to my bid that the Yosemite Commissioners should require all persons, all stages, and all common carriers that carried passengers to the Yosemite to come and take passengers to and from this hotel whenever they desired it. My bid and Mr. Tyack's bid, which I guaranteed, were both of them rejected. The State lost \$350 a year by my bid and \$600 by Tyack's. Of course I lost any profit that I made by keeping the hotel, and knowing what kind of a man I was going to put in—a man that I knew would keep a first rate hotel. I said in this first conversation that I wanted a first class hotel at Yosemite, because it would benefit my own.

THE CHAIRMAN: Has any of the committee any questions to ask Judge Grant? I ask if any of the committee wants to ask him any questions—wants to ask Judge Grant any questions to brighten his memory?

MR. MILLS: Is that the only matter that Judge Grant is desirous of testifying to?

THE WITNESS. That is the only thing I know of my own personal knowledge, and I suppose that the committee can get information from others better than they can from me. I do not care about interjecting mere hearsay into a case. In justice to Mr. Mills, I will say that he was not present when those bids were rejected—so the newspapers say.

MR. MILLS: I was not present, but I reviewed the action of the Commissioners and I approved of it—I approved everything that the Commission had done. If I was absent, it was my own fault. I was not there when the hotel was let, and while I don't know what action I would have taken had I been there, it was still my right and duty to be there, and I take a full share of the responsibilities.

THE CHAIRMAN: You had the privilege of being there, and it was your own fault not to be there. I would like to ask Mr. Grant a question:

Q. What does Mr. Cook pay for the hotel? A. \$1,200. You ought to know because the contract is in writing.

Q. What does he pay for the privilege of keeping the hotel? A. \$1,200 for the hotel and \$350, as I hear, for the privilege of keeping a bar and billiard saloon outside of that.

MR. MILLS: That is outside and not connected with the hotel? A. Yes, sir.

Q. His rent, then, is \$1,550 instead of \$1,200? A. No, sir; his rent to the State is but \$1,200—the State gets the rent of the hotel and the Commissioners get the rent of the privileges.

MR. MILLS: The Commissioners get the entire rent—do you know of your own knowledge, Judge, that the Yosemite Valley Fund does not get the entire sum paid by Mr. Cook? Do you know absolutely that that is the case? A. I suppose, sir, that the State gets the rent of the hotel.

Q. Does not it get the rent from the barroom also? A. I suppose not.

THE CHAIRMAN: Well, that is a new rule, if the Commissioners keep that themselves; they did not use to do that; when I was Commissioner, it was all turned over.

THE WITNESS: I saw a statement in the newspaper recently about the rejection of my bid.

THE CHAIRMAN: They are supposed to pay it to the State. If they do not, or do not use it for State purposes, they are simply guilty of a crime against the laws of the State; they are guilty of a crime if they appropriate any of this money to themselves. A. I don't pretend to know anything about what they do with the money; I suppose the State sees to that. I don't trouble myself to examine their accounts, although, being a corporation, they are entitled to be open to everybody.

THE CHAIRMAN: Well, the rent of the privilege should go in the same fund that the rent of the building does. A. I suppose if I had rented the building, I would not get a right to keep a bar and a billiard saloon if I were disposed to.

MR. MILLS: What conditions were attached to your proposition? A. I will state it, sir.

Q. First repeat it to the Commission, so I can call their attention to its nature. A. That the Commissioners should require all stages, all conveyances, that carried passengers for hire to the Yosemite, to take passengers to and from this hotel whenever they wanted to go, and I put the reason upon paper: it was that Mr. Cook's barkeeper had made a threat that the stage company would not carry passengers.

MR. MILLS: We know that threat; I have heard of that before. I want to ask upon whose authority did Mr. Cook's barkeeper declare the policy of the stage company in the premises? A. I am a lawyer enough to know that he was authorized by Mr. Cook to do it.

Q. What had Mr. Cook to do with it? A. I understand he was one of the chief stockholders.

Q. Do you know that Mr. Cook is one of the stockholders in the stage company? A. I don't know, sir.

Q. Then it is a supposition on your part that Mr. Cook is a stockholder in the stage company? A. Yes, sir.

Q. And it is a supposition on your part that the barkeeper was authorized to make that statement—he did not tell you that Mr. Cook authorized him to do it? A. Your question implies a doubt whether Mr. Cook was a stockholder in the stage company. I will state that Mr. Cook and Mr. Washburn sold a majority of the stock of the stage company, and you can find it out by calling on the other stockholders.

Q. You found that out? A. Yes, sir.

MR. HAMILL: Why were your bids for the hotel rejected—have you any idea? A. I don't know, sir.

MR. MILLS: I will state to the gentlemen of the committee that the history of the case is this—

MR. WHITE [Interrupting]: Let me say right here that as far as I am concerned, I would rather hear the sworn testimony, and if there is anything to be elicited in the way of the examination of the witnesses, let it be done, but I would rather not have any statement while the witness is on the stand. I do not even know who called the witness, nor in whose interest the gentleman is examining him.

MR. MILLS: I simply intended to say that all the bids were rejected—according to the minutes of the Commission they were all rejected, and new bids required to be made owing to the conditions impossible to be fulfilled. That is simply offered to explain Judge Grant's testimony. As far as I am concerned, I wish every fact connected with this matter to come out, and I will insist in the cross-examination so that every fact shall come out in this matter.

MR. GOUCHER: Judge Grant has appeared here as a witness, and has stated certain matters, and when he had concluded Mr. Mills commenced to cross-examine him, Mr. Mills being one of the witnesses, and I think that he ought not to be interrupted until that cross-examination is completed.

MR. WHITE: But what I want to get at is this: This is in the nature—some of it—of a judicial investigation. I do not think, while the witness is on the stand, that it is proper for everybody to interrupt him with their

statements, because there can be offered a full opportunity to make a statement hereafter.

THE CHAIRMAN: A great deal of this testimony is hearsay.

MR. WHITE: What I am getting at is, that the witness should be allowed to testify without interruption.

MR. MILLS: I can see the gentleman's point is well taken.

MR. WHITE: My proposition is, that if we are taking evidence, let us take it, and not interrupt it with statements.

MR. MILLS: I shall not be guilty of any departure of that sort as far as I am concerned.

THE CHAIRMAN: Well, gentlemen, go on with the witness.

MR. MILLS: As a question of cross-examination, I understand that Mr. Grant's testimony amounts to this: That he bid on that hotel, and his bid was rejected. He stated that he attached to his bid a condition—I wish to call the attention of the committee to that.

MR. WHITE: Was the bid in writing?

THE WITNESS: Yes, sir.

Q. Where is it? A. I don't know.

THE WITNESS: It is with them unless they destroyed it.

MR. MILLS: It is in the archives of the Commission. The Secretary of the Commission is not here, owing to a misunderstanding.

THE CHAIRMAN: Senator White, there is no difference in their statements about that. Mr. Mills explained that statement the same as the witness did.

MR. MILLS: I want to call up that testimony again.

THE CHAIRMAN: There was one little squabble here about one thing.

THE WITNESS: Mr. Mills said the condition was impossible for them to perform—I said the statute gives them the power to perform it, and that is the reason I put it in. The condition was that they should carry passengers to and from this place when they wanted to go there—it was perfectly in the power of the Commissioners to require them to do it.

MR. MILLS: Did the Commission reject your bid solely on the ground of that condition? A. That was the only reason assigned in the newspapers for it—I don't know; I was not present; they did not assign to me any reason why they rejected my bid.

Q. How many bids were there before the Commission? A. Four.

Q. They must have rejected three? A. Yes, sir; they rejected all of them.

Q. They rejected all of them? A. Yes, sir; and they started anew.

Q. They required a new proposition to be made? A. Yes, sir.

MR. WHITE: Did you bid again? A. No; but Mr. Tyack bid again. His bid was \$600 a year more than what they let it at.

Q. More than that which they let it at? A. Yes, sir; he offered \$1,800 a year, and they let it to Cook for \$1,200.

Q. What was this contract? A. The letting of the hotel, the Stoneman House.

THE CHAIRMAN: This seems to be about all Judge Grant knows about the management of the valley—the letting of this hotel.

MR. MILLS: Did you write a letter to the Secretary of the Commission yourself, to withdraw your bid in favor of some one else? A. No, sir; but I wrote that I would prefer them taking the highest bid. I did not withdraw my bid, but I told them I would prefer they would take the highest bid. The letter will show for itself. I did not withdraw my bid.

Q. Did you ever see the specification that was put out by the Commission concerning the furnishing of the hotel? A. No, sir; I did not.

Q. Were you present when the bids were opened? A. No, sir; I was not.

Q. You were not there to represent yourself as a bidder? A. My bid represented itself, sir.

Q. But the conditions of furnishing, and things of that sort? A. Oh, I agreed to furnish it just as they wanted it. I understood when I bid that they required the hotel to be furnished in a certain way, and I expected to furnish it just as they ordered it, or expected to have it done. I expected to be responsible for my bid.

Q. Please state the amount of your bid again; what was the amount of your bid? A. \$1,650 a year—\$1,600 or \$1,650—I don't recollect—the bid is on file, and it can tell for itself.

MR. MILLS: That is all.

THE CHAIRMAN: That is all.

MR. WHITE: I want to ask the witness one question: Do I understand that the situation was this, that you first made a bid, and that bid, as well as all the other bids were rejected by the Board? A. Yes, sir.

Q. Subsequently the Board readvertised? A. No, they did not; if they advertised, I would have been there.

Q. Well, you put in a second bid? A. No, sir, I did not. I did not have any notice. They took in the second bid the next day. If they had readvertised as they did at first I should have got notice.

Q. Well, did they advertise in the first instance? A. I bid under that advertisement.

Q. When was this transaction? A. Some time in August, the bidding took place.

Q. A year ago? A. Yes, sir; a year ago last August.

THE CHAIRMAN: A year ago last August.

MR. WHITE: Well, what was your understanding, that you were in the field, or when you wrote to the Commission to the effect that you would rather they would take the highest bid—was it your idea to convey to them your impression that you preferred to be dropped out—was that your idea? A. No, sir.

Q. Well, what was your idea? A. It was that they should take the highest bid because the State would be the most benefited.

Q. Who offered more than you did? A. Mr. Tyack.

Q. Whose bid was accepted?

MR. MILLS: It was Mr. Cook's bid.

MR. WHITE: Mr. Tyack's bid was more than yours? A. Yes, sir.

Q. Are you sure it was more than Cook's? A. Yes, sir.

Q. Of course, the records will show what it is. Was there any condition in reference to bidding that you did not comply with? A. No, sir. I complied strictly with the conditions advertised.

MR. MILLS: How did you ascertain the amount that Mr. Tyack gave? A. I wrote it out for him.

Q. You and Mr. Tyack bid together? A. Yes, sir; we bid at the same time.

Q. And you wrote preferring Mr. Tyack's bid to be accepted to your own? A. Yes, sir.

Q. You were apprised as to the time of the meeting when these bids were to be opened? A. I was, sir.

Q. And you were not present? A. No, sir.

Q. Well, just one more question—it is scarcely a question, in fact—was not your letter calculated to put the condition on inquiry as to whether you wanted the hotel or not; arguing that Tyack should have it instead of yourself? A. I think not, sir.

Q. Was not your letter calculated to mislead the members of the Commission? A. I think not, sir.

Q. If you wanted to take the hotel yourself, why didn't you underbid Mr. Tyack; is it usual or customary for bidders who are in earnest not to underbid somebody else? A. I suppose people who know me, know I am responsible for anything I say.

Q. I don't doubt your responsibility? A. And I thought the Commission might doubt the responsibility of Mr. Tyack.

MR. WHITE: Well, in regard to this matter, if there is anything in your letter calculated to make the Commission doubt your desire to accept it, still, as a matter of fact, you say that you had no notice that your bid was repudiated and not acted on, and had no notice that there was any reoffering of the contract? A. I had no notice, sir.

Q. And you didn't know anything about it until—— A. [Interrupting] Until after they accepted Mr. Cook's bid.

Q. Until they actually let it. How do you know Mr. Cook bid again? A. I suppose so, sir; I understood so.

Q. These are matters of record, any way? A. I understand that the Commissioners rejected all these bids, and said they would let the hotel at the lowest price that the State authorized it to be bid for; and let it to the person who paid the highest price for the privilege of keeping a bar-room and saloon. Mr. Goucher will say whether I am correct or not.

MR. GOUCHER: Well, it would not be proper for me to make a statement about it at this time, of course.

MR. MILLS: I will state to Senator White that the Commissioners will be able to defend this action on perfectly justifiable grounds, but we cannot make any statement in connection with the testimony of this witness. The testimony of this witness is all hearsay; he knows nothing of the considerations which influenced the actions of the Commission in the matter. The bids are not here; the conditions attached to the bids are not here, so this committee cannot know what the facts were and what the conditions were upon one question which has been raised. It would probably be fair to the Commission to ask Judge Grant another question, because I want to bring that very prominently before the minds of the committee. There is an office in the valley called the Guardian's Office, which is the headquarters. I hope the gentlemen of the committee will bear with me while I prepare the way for this question; they will see that it will be very important. When the Legislature made the proposition of a hotel, a great controversy arose as to where it should be located. The stage companies have never been obliged, that is, by law, or by rule, or by regulation, nor do the Commission claim the right to make the stage company deliver the passengers wherever there may be boarding houses. The valley is nine miles long. When they enter it they have discharged all their duty. Perhaps it could be made incumbent on them to deliver at headquarters. We have it in contemplation to require stage companies on both sides to deliver their passengers there, because the stage companies, with their influence over the passengers, can make or unmake a hotel. We have been trying to do the best we could for the public in the premises. Now, we have in contemplation the regulation that the stage companies should be obliged to carry their passengers to the Guardian's Office, or the central point, and then the hotel keepers should be responsible for their delivery, just as the hotel keepers would in cities where passengers are delivered by rail. That matter being in contemplation at that time, it was defeated by the members of the Commission.

THE CHAIRMAN: Did I understand you to say, Judge Grant, in the early part of the testimony, that you were bidding for Tyack? A. Bidding for whom—for somebody else? I intended to have somebody else have the hotel; I had the names in my mind. I intended to have the hotel kept in a first rate manner.

MR. MILLS: You did not intend to keep the hotel yourself? A. I intended to have the hotel kept in a first rate manner.

THE CHAIRMAN: You intended to be responsible in the matter, and that somebody else would keep it? A. I intended to have it kept. I had a hotel where I was, but I intended to have some person keep that hotel as I thought it ought to be kept and as I supposed the Commission would require it to be kept.

MR. MILLS: You did not bid for yourself, then, in this matter; you intended to have the proprietorship in this hotel, but to have somebody else run it?

MR. HAMILL: You expected to place a party in the hotel to act as an agent? A. Yes, sir.

Q. And you did bid for the hotel? A. Yes, sir.

THE CHAIRMAN: Were you going to pay him wages, or were you going to turn over your contract to him? A. I was going to hire him to keep the hotel; I had him in my mind's eye when I made the bid.

MR. MILLS: I wish to have Judge Grant make a statement as to how much the hotel was renting for.

THE CHAIRMAN: Judge Grant said Cook got the hotel for \$1,200, and he paid \$350 for the bar privileges.

MR. MILLS: And Mr. Grant's bid was \$1,650?

THE CHAIRMAN: Mr. Grant, in giving his testimony, segregated the bid of the bar and the bid of the hotel, and stated his opinion that the Commissioners got the money for the bar, and the State got the money for the hotel. That was Brother Goucher's explanation to the "Examiner."

MR. WHITE: You don't know anything about that? A. No, sir.

THE CHAIRMAN: Are there any other matters connected with the valley which you know of your own knowledge—for instance, the letting of the hotel—which would throw light to this committee? A. No, sir.

Q. Any irregularities? A. No, sir; not that I know of my own knowledge.

MR. MILLS: With your permission I will ask Judge Grant if he has ever visited the valley? A. Three times, sir.

Q. As a visitor you have examined the condition of the valley, have you not? A. I have, sir.

MR. MILLS: Well, this gentleman would be a very competent gentleman to make any complaint against the condition that he found in the valley, and I would be very much pleased, as one of the Commissioners, to have everybody that has fault to find with the condition of things, to find it here.

THE WITNESS: I would be very reluctant to do that.

MR. WHITE: What was the condition of affairs in the valley when you were there? Did you notice anything that struck you as being irregular or improper or questionable there as a matter of policy or any other way? A. I think the whole policy in relation to the valley is wrong.

Q. Did you see anything there that caused you to think so? A. I say I think everything there was in the hands of a ring.

Q. That is a statement upon which no one can predicate any judgment. From what did you arrive at that conclusion? Because you saw certain things there? A. Yes, sir.

Q. Well, will you please tell us what those things were which produced that impression on your mind; mention the most prominent things? A. A man by the name of Leidig, that kept the hotel when I first went there—

Q. [Interrupting] When was that? A. That was in 1882 or 1883—the first time I ever went there after I came to California.

Q. Well, tell us about him? A. It was generally reported among the passengers that Leidig's was the best hotel in the valley. It was also stated, and Leidig told me that it was a fact, that the stage company boycotted him, and would not take passengers there.

Q. Is this stage company a corporation? A. The stage company is. I have seen their name, the Yosemite Stage and Wagon Road Company, on their wagons ever since I came to California.

Q. Had the Commissioners at that time anything to do with the stage company? A. One of the Commissioners was in the stage company.

Q. Which one of them? A. Mr. Goodwin, one of the agents of the railroad company in San Francisco.

Q. What was his name? A. I think his name is Goodwin.

Q. Was he a Commissioner at that time, or is he now? A. I believe he has been a Commissioner for some time, sir—I don't know—I have not investigated matters of that kind—it is not a matter that concerns me—I don't remember that he was a Commissioner.

MR. MILLS. He never was a Commissioner.

MR. WHITE: I understand not.

Q. When there you observed that the passengers were disposed to go to a hotel, and this man told you that his hotel was boycotted by the stage company. When did you see anything that suggested to you that the system was wrong? A. I cannot say that I did see anything in particular that suggested itself to me at that time.

Q. Well, did you afterwards? A. No, sir; I did not observe enough to see.

Q. Well, have you ever seen anything—any specific fact to indicate that the management was wrong? Has anything ever struck you as indicating any error in the management except the mere fact that this man told you that he was being boycotted? A. Oh, yes; I have heard of a great many things.

Q. Just tell me plainly what you know—I am upon a tour of investigation? A. Well, you are asking me what I know—I have been there since that wire fence has been put over the ground.

Q. You did not find any wire fence there for many years? A. A year ago last fall.

Q. If you have anything to throw any light on this matter, tell us? A. I don't like to be an informer; I am merely stating what the public know just as well as I do.

Q. I am one of the public, and I don't know anything about it, and I want to find out. You say you don't want to be an informer; you are here testifying, and as far as you know anything within the scope of your oath, you should tell what you know; it is not what your preference is; I understand you don't want to testify. Let us have what you know; there is no object for you to conceal it. Now, do you know anything about this matter, Judge, at all? A. From my own personal knowledge, I have already given you—what I heard is hearsay. When I was there I saw that a great deal of the ground was fenced up; I saw that very inferior horses were put there for the use of the passengers. The first time I went there they put my child on a balky horse, and I had to get off of my horse and give her mine, and I saw the other horses in the stable. When I went there a year

ago last fall with my nephew—of course, it is a matter of indifference to me—I was put on a mule.

MR. MILLS: Do you regard the use of a mule on a trail as mismanagement? A. No; as I say, it was safer, I suppose—I suppose they are safer than horses.

MR. WHITE: Then you think that that was good management? A. Yes, sir.

MR. MILLS: When you were in the valley, did any of the hotel keepers tell you that they had pooled their issues and were dividing the profits of the season? A. Now, you have asked me something that I have forgotten. Mr. Leidig told me when I was there—the last time and stopped at his house—that he paid the stage company a dollar a day for every passenger that came to his house; and I had heard that Barnard did the same thing a year before.

Q. A dollar a day for every passenger that came to his house? A. Yes, sir. When I went to pay my bill it was \$4. I said it is your duty to charge \$3 a day; well, he says, I have to pay a dollar to the stage company for every passenger that comes here.

THE CHAIRMAN: I used to know something of that—is not that the driver's fee—do not the drivers get this money for spending money?

MR. WHITE: It seems to me if the drivers get it, I would come to the very broad conclusion that the stage company knew something about it.

THE CHAIRMAN: I know they used to do it, because the driver could take them anywhere—the boys got it for whisky money.

MR. MILLS: Did Mr. Leidig tell you it was for the stage company? A. Yes, sir; he did not say it was paid to the driver—he said it was paid to the stage company?

Q. I will ask you if they pooled and divided the hotel receipts of the season? A. No, sir; they never told me that at no time.

Q. You never heard that? A. No, sir.

Q. That was not part of the common report? A. No, sir. There was a man here the other day stated that they pooled the proceeds of the two stage companies, one on this side and the one on the other.

Q. Have you heard of them doing that every season—pooling their issues? A. I never heard of that before.

Q. You never heard of the hotels pooling their issues? A. I did not, sir. If I had I suppose I should have said that the Commissioners were not faithful to their trusts.

Q. Well, that is a question I would like to have you discuss before this committee. Do you think the Commissioners should regulate the charges of all these hotels? A. Yes, sir.

Q. And if they were allowed to charge only so much as the Commissioners permitted them to charge, at the close of the season how would you, as a Commissioner, prevent them dividing their money as they saw fit? A. By the exercise of the arbitrary power that the Commissioners possess—they have just as much control over that valley as the State of California has over any of its lands.

MR. WHITE: I suppose what Mr. Mills is getting at is this: if you did regulate the hotels there— A. [Interrupting] And they turn in and divide the money afterwards.

Q. After the season is over we go around the corner and divide it; of course it would be a pretty hard thing to prevent that? A. Yes, sir.

MR. MILLS: As the pooling could not affect the public at all, how would the Commissioners prevent them doing that, if they did not do it by the consent of or with the connivance of the Commission? Now, in the first

place, it is difficult to get anybody; Mr. Leidig was at the valley, and sold out, left us—he sold out his privilege; that is one of the difficulties the Commissioners have to encounter— A. [Interrupting] Leidig said he sold out because they wouldn't give him a lease for a longer time than a year, and gave the Stoneman House more. That is the reason of his selling out, that they boycotted him.

MR. MILLS: Mr. Leidig will be here.

THE CHAIRMAN: Is he here now?

MR. MILLS: He will be here on the eleventh.

THE CHAIRMAN: Well, did Mr. Leidig ever tell you he didn't pay any rent for that house he lived in? A. He did not.

Q. You never heard it discussed whether he ever paid any rent or not? A. He never told me he did; neither did any one of the hotels ever tell me they paid any rent.

MR. MILLS: I have been a Commissioner for ten years, and I know as a matter of absolute fact that Mr. Leidig never paid a cent.

THE CHAIRMAN: I happen to know of my own knowledge, when I was Commissioner, he never paid a cent. I just want the facts brought out.

MR. WHITE: Well, I will not ask any further questions, because we will not get to the examination of any other witness at this rate. I would suggest, Mr. Mills, that the Secretary bring these records here, so we can settle as much as we can by reference to the records, and not take so much time.

MR. GOUCHER: These charges are newspaper charges, and the Commissioners wish to hear them. The witnesses will be called, and the records can then be produced—you can have the records at any time.

MR. WHITE: There is a certain amount of public charge that has been made about the matter. Of course, we are not really trying this case upon a technical complaint with a technical answer; nor upon issues arising upon an indictment or plea of not guilty. But, as far as I am concerned, I am simply anxious to investigate these things that have been alleged, and have the whole facts come out; and if there is any blame to be attached to any one, let it be shown. And if, on the other hand, if everything is all right, let the parties against whom these charges have been made and published be fully exonerated. So, I have gone over the whole question of the management, so far as the ideas have presented themselves to my mind. For instance, I have asked something about contracts, but, of course, the written documents covering these transactions would be the best evidence of what has been done, and must speak for themselves, and I want to see them.

MR. GOUCHER: I want to state that all the papers, including these contracts that have been testified to by Judge Grant, and also all other papers and books kept and held by the Yosemite Commissioners, are here now—were brought here at the instance of the Yosemite Board of Commissioners; and the only difficulty that we are laboring under is this: Mr. Truman, the Secretary, brought those papers here last week, but he could not be here to-night; but the papers are here. He telegraphed to me to-day, asking if the investigation would go on to-night, or whether it would go on the eleventh. The books and papers are here, but he is not here.

[The Chairman reads the telegram from Mr. Truman.]

MR. MILLS: Mr. Truman telegraphed me, asking if the examination would go on. I telegraphed back, "Yes." He then answered this—

THE CHAIRMAN: I would state this, gentlemen, that there is a great deal of this testimony coming in that is hearsay, and we have got to give the investigation a good, big, wide scope to get it all.

MR. MILLS: The Commission is willing that the proceedings should cover all these occurrences, even as to Mr. Cook's barkeeper speaking of the

stage company; they are matters that are deemed to be of the highest importance in the tattle of the valley. We would like to have that sworn to in this way. Mr. Cook's barkeeper is a gentleman of such importance that I would like to see him here and give this testimony.

MR. CHAIRMAN: Well, gentlemen, have you any further questions to ask Judge Grant?

MR. MILLS: I have not.

THE CHAIRMAN: Have you any more, Senator White?

MR. WHITE: No, sir.

THE CHAIRMAN: I guess, Judge, they have got through with you.

MR. ROTH: It seems to me the proper thing would be to do this way: We don't know what questions to ask these witnesses, and we do not really know what the charges or what the purposes of this Commission are. It seems to me the right way to get at this, so as not to ask the witnesses unnecessary questions, or to ask them intelligently, is to put these Commissioners on the stand and get an idea of the powers they have, and the reasons for the making of these charges; it would give us an idea of what we want to investigate.

MR. WHITE: That would be taking the wrong end of it it seems to me, to put the man that is charged on the stand to tell what he is accused of.

MR. ROTH: But there is nobody on the other side to ask questions.

MR. WHITE: I think we can finally find out what he does know; we may be indirect about it.

MR. MILLS: I suggest, Senator, that while it would be quite an unusual proceeding, at the same time it would have this value—gentlemen of this committee, inasmuch as most of you have never had the misfortune to be a member of the Yosemite Committee, except Senator Meany—he has had that misfortune, he served with me on that Board, and he became thinner and thinner every year; you don't know what these accusations mean—you would be better informed of the proceedings, and, as suggested by the Senator, you would be better qualified to understand the force and scope of the testimony. If something of a general nature was stated here, so that you would have a general idea of the law under which the Board acts, and the policy which has governed the Commission from its inception, and the changes of the policies, and the reason of the changes that have occurred from time to time, I think it would be an advantage; you would better understand the testimony that would be given here. There is, therefore, that value in the suggestion. The testimony of Judge Grant has a value in my mind which I do not know whether will be understood by the Commission or not. I can see shades of meaning in it that you could not possibly see, because I know to what it refers. I have been familiar with the administration of the valley since 1880.

MR. WHITE: I never in my life heard of an investigation being conducted in that way, and sooner or later we have got to find out what the purposes of the Commission are, from our own investigations; and, of course, in the examination of the witnesses the Commissioners themselves can state what they want; but to have the gentlemen themselves, who are the subject-matter of this investigation, get up and inform the committee what they are charged with, and their explanation on the subject, and then have the testimony afterwards, it seems to me is entirely unnecessary. Let us put the witnesses on the stand, and then they can be called upon to explain; and in cross-examination they can probably bring out such things as they want to. There will be no difficulty about examining the witnesses that are here.

MR. MILLS: I was afraid you would have no case unless we made it.

MR. WHITE: No man ought to be compelled to testify against himself; that is a deeply rooted principle.

MR. ROTH: I only made the suggestion to expedite matters.

MR. MILLS: In regard to Judge Grant, he is a thoroughly competent lawyer, and a man of great ability—there is no foolishness about him—he could tell all he knows without any questioning.

MR. GOUCHER: He was a lawyer before I was born.

MR. MILLS: We can put a witness on the stand.

MR. WHITE: Very well, do that. I do not care about the order of the witnesses.

MR. MILLS: Mr. Brightman is here.

MR. WHITE: Well, call him.

FREDERICK A. BRIGHTMAN.

Sworn.

Examined by MR. WHITE:

Question—Where do you live? Answer—I live in Mariposa.

Q. Are you familiar with the Yosemite Valley? A. Well, I have been in there for the last twenty years.

Q. You have been living there? A. I started in there with Mr. J. M. Hutchings, first.

Q. Well, did you ever have any interest in the saddle train—what you call the saddle train? A. I used to have an interest there.

Q. What was the nature of the saddle train—a pack train, or what? A. A saddle train—pack horses.

Q. When did you have such a train, or what do you know about it? Give us the history of the saddle train? A. Well, I went to the valley in 1870, I think it was. I went in there first with six horses. The next year John Rohrer and me went in with twelve, and we had those horses—horses that cost \$125 apiece—we were supposed to have a good saddle train for the tourists, and we fed our horses hay and barley both.

MR. MILLS: I do not want to interrupt the witness, Mr. White, but I wish to inform you right now that the Commission in charge of the Yosemite Valley in 1870 was dismissed by statute—legislated out of office—and the present Commission in no sense are a party to anything that was done prior to 1880, that is, the present Commission. They have been in charge only since 1880—since the beginning of that year. The old Commission was legislated out of office, and the new legislated in.

MR. WHITE: Of course, if you were not the Commission, it does not involve you. It does not involve any gentleman who was not there.

THE CHAIRMAN: The new Commission is entirely differently constituted. The Commissioners were appointed by Governor Perkins, and it is useless to date the investigation back of that time.

MR. WHITE: We cannot tell what he was going to say—well, go on, proceed. A. Well, the most of that Board are new Commissioners.

Q. What do you call the old Board? A. Raymond, and Eames, and Mr. Madden, and Ashburner.

Q. How many of those are on the Board now? A. Only Madden, now, and Judge Eames—I am not certain, I have not kept any run.

MR. HAMILL: The record will show that.

MR. WHITE: But I want to see if the witness' memory is good or not. Now, when did you have this transaction with them of which you were

about to speak? A. Well, I was there for five years that I had the saddle train.

Q. When did your relations with the saddle train cease; when did you give it up, or when were you compelled to give it up? A. I am not certain about the date. I was there when old man Lemmons died, and I then gave it up, because I could get no satisfaction out of the Commissioners.

Q. Well, was that in 1883? A. Before that, I think.

THE CHAIRMAN: Lemmons died before 1880? A. Yes, sir.

Q. Well, it was prior to 1880? A. Yes, sir.

Q. Well, is there anybody on the Board who was Commissioner at that time?

THE CHAIRMAN: There is one man—Tom Madden. A. Tom Madden.

THE CHAIRMAN: He was out four years, and then went back again.

MR. WHITE: He was the only one that was on the Board at that time.

THE CHAIRMAN: Yes, sir.

MR. WHITE: Well, what was the matter of which you complained? A. I complained that I could not make any arrangements; I let horses there for two bits a day and fed them hay and barley.

Q. What was it you wanted the Commissioners to do that they didn't do? A. I was willing to let them at a dollar a day; that would have been satisfactory.

Q. Did they interrupt you from collecting a dollar a day? A. Well, one man told me that he wouldn't have anything to do with it whatever.

Q. Why didn't you collect a dollar a day if they didn't interfere with you? A. Because Washburn was in against me.

Q. Then you wanted to prevent competition; was that it? A. Well, when I went in there—

Q. [Interrupting] I want to get at what you wanted to do; you were there, and you let horses for two bits a day—that is a fact, is it? A. Yes, sir.

Q. Now, then, you wanted them to give you a special privilege as against everybody else? A. Well, if they had a mind to—to fix it to suit themselves.

Q. You wanted an especial privilege so other people could not compete with you—is not that a fact? A. No, sir.

Q. What was it you wanted? A. I wanted them to set a price to rent horses, and if I could not stand it I would go off.

Q. You wanted them to set a price at which horses were to be let out? A. I suppose I could stand it as long as anybody else.

Q. This is a very plain, simple proposition: you were letting out horses for two bits a day, is not that so? A. Yes, sir.

Q. And you wanted the Commission to fix it so it would be a dollar a day? A. Well, that is what I am going to tell you. I said to Raymond—

Q. [Interrupting] I do not care one cent what you said to him or any one else; I want to know if that is what you were after, to have them fix it at a dollar a day? A. Yes, sir.

Q. Then why didn't you say so? A. I told you before.

Q. Is that all there is in that? I have always been in favor of plenty of competition. Is that all there is in that charge; is that all you complain of? A. Well, since that time I have made two applications for a lease; one for a barn in the valley, and another to run carriages, and I never got any answer to either of them.

Q. When did you make the application? A. To the Board.

Q. When, I say? A. I cannot say certainly.

Q. Of course you cannot remember the exact day, but about when did you make these applications? A. Oh, one was about eight years ago, and one about four years ago.

Q. One eight and the other four? A. Yes, sir.

Q. Were they in writing? A. Yes, sir; I wrote to the Board.

Q. Whom did you address? A. To the Board.

Q. Well, did you address them directly to the Board of Yosemite Commissioners, or did you write it to some member of the Board, or to the Secretary, or how? A. I directed it to the Board of Commissioners, and never got any answer from them either.

Q. One was about four years and the other was about eight years? A. Yes, sir.

Q. Did you write to them more than once after you failed to get your communication answered? Say eight years ago, did you write and inquire why they had not answered your letter? A. Only that one time. I put in my application, and it was not answered, and of course I did not say any more.

Q. Now, is there anything else? Is there any irregularity, or any improper management, or anything questionable about the conduct of the affairs of that valley that you know except what you have stated? A. Well, of course, I have heard a great deal of complaint. Of course, as Mr. Grant says, I have been well acquainted with Mrs. Leidig, and I have been there time and time again, and heard her complain about the Commission.

MR. WHITE: Are these two parties, Mr. and Mrs. Leidig, to be here as witnesses?

THE CHAIRMAN: They were here the other day.

MR. MILLS: Mr. Leidig was here, and returned to his family in the City of Los Angeles.

MR. WHITE: Was he subpoenaed?

MR. MILLS: He came here on the written invitation of the Chairman of the Commission, and he will be back here on the eleventh.

THE CHAIRMAN: He will be back?

MR. MILLS: He will be here on the eleventh.

MR. WHITE: Is there anything that you know of your own knowledge touching this matter—any cause of complaint, any questionable management of which you are aware? If there is, do not hesitate to state it. A. Well, there is one thing: Three years ago I telegraphed to Mr. Cook to have him to go to Mr. Dennison in regard to renting a house for me—to see if I could get it. He telegraphed back that I could not have it. Then I telegraphed again, to see if I could have a tent up in Mrs. Glen's yard, and I could not get that.

Q. Whom did you telegraph to? A. I telegraphed to Mr. Dennison.

Q. W. E. Dennison; are those the initials? A. That is the one; he was a Guardian of the valley.

MR. WHITE: When was that you telegraphed to him about that tent? A. That was three years ago.

Q. Did he answer your dispatch? A. Yes, sir.

Q. He telegraphed to you personally? A. Yes, sir.

Q. Dennison did himself? A. Yes, sir.

Q. And said you could not have it? A. And said I could not have it.

Q. Did he understand? Did you telegraph that you wanted merely to put a tent in somebody's yard? A. Well, I told Mr. Washburn to telegraph him.

Q. Is Mr. Washburn here? A. No, sir.

Q. Where is he? A. In San Francisco. No; he is in the valley now.

Q. What are his initials? A. E. P. Washburn, I believe.

Q. Well, now, is there anything else? A. No. That is my own business what I said; the balance is what I heard; it don't do any good to talk. I have heard complaints, and probably you have. I know there has been a great deal of complaint. People complain sometimes when they had not ought to; but I complain on my own account, because it has been the ruin of me for the last twenty years.

Q. What I am getting at is not an inquiry as to whether you have been hurt, or whether somebody else has been hurt, but an inquiry as to what you know. Of course, it is proper for you to state where it has hurt you, and it would be also proper, if you know anything where anybody else's interests have been interfered with, for you to state that, if you know. Do not confine yourself to mere cases where you have been injured yourself, but do not hesitate to state any case in your judgment, where there has been anything done that was improper; tell us what it is, so we can judge, ourselves, of it. It is designed to get all the facts which you know. A. I have no more to say.

MR. MILLS: I would like to ask Fred. what year was it you telegraphed in regard to this house? A. I think it was three years ago.

Q. Three years ago? A. When they fenced up the valley there, that was the time; I think it was three years ago.

Q. Three years ago? A. Yes, sir; as near as I can remember it.

Q. What did you want this house for? Did you want this house for residence purposes for your family? A. I was going to work for Washburn, and I wanted a place to live; and I took my family in there, and then I had to go back to Tamarack—no, I don't mean Tamarack, but Checkerville.

Q. That is a stage station? A. Yes, sir; that is a stage station.

Q. Did you have your family living in the valley at that time? A. No, sir, in Mariposa.

Q. Did you take your family out? A. I took them to Checkerville.

Q. You could not get the privilege of living in a house, or even in a tent at that time? A. No, sir; I could not.

Q. Have you the dispatch you received from Mr. Dennison? A. No, sir; I threw it away—I didn't want to see any more of it.

Q. Did you ever receive any letter from him on the subject? A. No, sir.

Q. Did you ever make any application to any member of the Commission in regard to this matter? A. No, sir; I did not make any application.

Q. Did you ever inform any member of the Commission in regard to this act? A. No, sir.

Q. And as far as you know, no member of the Commission ever heard of it until to-night? A. Priest was here, and he knows all about it.

THE CHAIRMAN: He wasn't on the Commission at that time—he went out before I did.

MR. MILLS: So far as I know, before to-night, no member of the Yosemite Commission ever heard anything about Dennison's refusal to permit you to live in a tent. I didn't know anything about it. You at least made no complaint to any member of the Commission? A. No, of course not.

Q. Was there a house in the valley you could have had? A. Yes, sir.

Q. What house was it? A. That was the old Cavagnavale house.

Q. Did you intend to take a tent in there, or did you intend they should supply one? A. If I could not get a house I intended to take a tent.

Q. You were one of the employés of Washburn? A. Yes, sir; and I had to ask the privilege—I did not ask it, but I believe that was the rule to ask it; but I looked at in this way: I worked in that valley with a four-horse team for over a month, and worked over a month to keep the roads in order, and I never received a cent for it.

Q. When had you done that? A. When I first had a saddle train.

Q. In 1870? A. Well, it was when I worked in the valley.

MR. WHITE: When were those fences put up? A. Well, they have been fencing for the last four or five years. That was to stop me from having a saddle train, I suppose—they were going to fence everywhere up, and I had no place to put my horses.

Q. Where were those fences? A. Well, Lemmons had the first fence.

MR. MILLS: How long ago is it since Lemmons had a fence? A. I don't know.

Q. Twenty-five years? A. Well, I think about in 1870 that he had the fence made.

Q. Nineteen years ago? A. He had a large orchard there—the saddle horses we run there they interfered with his trees, and a meeting was called and he complained to Washburn.

MR. WHITE: You said something about fencing. Since that fence was in the valley how much of the valley is fenced—you can state that now of your own knowledge? A. Well, since I went out of the saddle train business probably forty acres—we called it forty acres. Then there is the old Hutchings field across the valley—all that side was fenced up.

MR. MILLS: How much was fenced in on that side? A. Well, I don't know how much—you know.

Q. Yes, I know all about it. A. Yes, I know you do.

Q. How is it fenced in? A. With a fence.

Q. There is a good wagon road there, is there not? A. No, sir; that is sowed up—all of it—and the road goes away around it.

Q. How many acres does it embrace? A. I don't know.

Q. Well, approximately how many? A. Well, I don't know how much there is in the field, but that is all fenced in.

Q. Well, how many acres do you suppose there are in that field? A. Well, I should suppose likely there was one hundred acres in that field.

Q. One hundred acres—that is one hundred and forty—how many acres altogether are absolutely under fence in that valley? A. Fifty acres that Lemmon fenced up.

Q. Well, that is one hundred and fifty, then. A. One hundred and forty.

Q. You say one field contained one hundred acres, and another fifty acres; now, how much more is under fence in the valley? A. There was another field.

Q. Cannot you get at the general proposition? A. You know more about it than I do.

MR. WHITE: Let me make a suggestion to Mr. Brightman: When one of these parties is asking a question, do not tell them what they know—the question is addressed to you for the purpose of eliciting your knowledge, and is not for the purpose of stating what other people may know about it. A. Well, from my information, the valley is all fenced up, except what has got trees on it.

MR. MILLS: Is that from your observation? A. Well, it is so.

Q. Can you tell me, Mr. Brightman, how many acres are absolutely inclosed by a fence, in the valley? A. No, sir; I don't know anything about how many acres there are.

Q. Do you know how many acres there are in the grant? A. No, sir; I do not.

Q. Well, approximately, are there two hundred acres fenced in, in the valley? A. Yes, sir; more than that.

Q. Are there four hundred acres? A. Oh, I don't know.

Q. Well, are there five hundred acres? A. I don't know.

Q. You don't think there is, do you? You do not believe that there are five hundred acres that are under fence there? A. Well, Mr. Mills, I can't guess at anything like that. There is Bridal Veil Meadows fenced in; El Capitan fenced in; Hutchings' fenced in; and all the land between Hutchings' and Stiegman's fenced in.

Q. Well, about how many acres altogether? A. Well, I don't know.

Q. Well, there are thirty-three thousand acres in the valley—what proportion of that is fenced up? A. Well, the only way I can get at it, all the grass land is fenced up.

Q. How much is there of grass land? A. Well, I don't know.

MR. MILLS: I have no further questions.

THE CHAIRMAN: Just to make this matter plain on those questions; now, as a matter of fact, is not some of this fencing absolutely necessary, and has not the butcher of the valley to have some places for the cattle? A. They allowed him to have it.

Q. He has fenced in some? A. Yes, he has that that he fenced. He fenced with his own money, too.

Q. Do not Barnard and the other hotel keepers claim a place to pasture their cows to accommodate tourists? Is it not a necessity for the men that keep a hotel to have a place to keep cows? A. Yes, sir.

THE CHAIRMAN: They don't run any milk wagon in there?

MR. MILLS: In addition to that I would like for you to elicit from this witness as to the right of campers in this matter. We have to have hay in the valley for the campers, or it would have to be hauled in there. We want the public to have it as cheap as possible; and I want to ask this, if he were a Commissioner, if it would not be necessary in his judgment? We wish to get his opinion as to the policy of the valley in that respect. Is it not necessary that some fencing should be had there to confine horses and cattle, so the horses of the campers that come in there can get hay, so the hay will be cheap for their horses when they get there? Are not some fences necessary for the proper administration of the valley, in your judgment? A. Well, you left a piece of ground for the campers, didn't you?

Q. Yes, and put a fence in for their benefit; we have a pasture for their benefit. A. Well, don't the saddle train eat it out?

Q. I don't know about that. A. They do.

Q. The only question is: are not fences necessary there; that is the only question; are they necessary, or are they useless? Is the existence of fences there a cause of impeachment of the management? A. Well, of course you might grant Mr. Barnard a field in preference to the one—

Q. [Interrupting] I don't care anything about Mr. Barnard.

MR. WHITE: The question is, whether you think there ought to be any fences there? That is tolerably plain English; the question is open and simple. A. Oh, they ought to have a place to keep their cows.

MR. MILLS: That is all.

THE CHAIRMAN: Have any of the Commission, or anybody else, any questions to ask of Mr. Brightman? Time is running along, and there are some other witnesses here.

MR. WHITE: I suggest we call another witness. Is there any other witness in the room?

THE CHAIRMAN: There are several, I believe.

DR. JOHN S. McLEAN.

Sworn. Testified as follows:

MR. MILLS: Mr. Chairman, we have a witness now whose familiarity with the administration of this valley dates back to a very early period, and who has knowledge of the administration of the valley from that time to the present. We also have, in the person of Dr. McLean, an intelligent witness. He understands the nature of this inquiry; he understands the general character and purport of the inquiry, and I am perfectly willing, for my part, to hear whatever he has to say throughout before asking him any questions; and I think he possesses sufficient intelligence to tell what he knows about the administration of the affairs without questioning.

MR. WHITE: I will suggest that any question which you desire to ask him you may do so. I understand he understands something about some intent to appoint Mr. Hutchings Commissioner.

MR. MILLS: The "Examiner" subpoenaed Doctor McLean for the purpose of proving their charges.

MR. WHITE: Mr. Chairman, this witness is here, and permit me to say that while I recognize the right of the Commissioners to interrogate the witnesses fully, and as he is here, and there has been some intimation that he knows something about some matters, I consider it our duty to question him, regardless of the fact whether the charges may have been made with that formality which would render them much more easy to investigate. The witness is on the stand, and he should not be excluded from testifying, simply because somebody——

THE CHAIRMAN [Interrupting]: We will save considerable time by finding out what he knows, and get at it in any way you please.

MR. WHITE: How long have you been familiar with the Yosemite Valley? A. Since 1867, when I went there with my wife and children.

Q. Are you acquainted with Mr. Hutchings? A. Very well, indeed, sir.

Q. Do you know anything about an attempt to have him, appointed Commissioner in 1888? A. Well, without Mr. Hutchings' knowledge, and I will now suggest, knowing that Mr. Hutchings was as well posted, and probably better posted, in the Yosemite than any man living, and would make a very excellent Commissioner, I sat down and wrote—it must have been to Bartlett.

THE CHAIRMAN: Wasn't it to Perkins?

MR. WHITE: Well, when was it? A. Well, it was when the last Commissioners were appointed.

MR. MILLS: When the last vacancies were filled? A. Yes, sir. I sat down in my office in Alameda and wrote a letter—a proper letter—to the Governor of the State, stating that I had become aware of the fact that some vacancies had occurred in the Yosemite Commission; and that I had known Mr. Hutchings a great many years, and knew his familiarity with the valley and his fitness for that position, and I suggested that when the persons be appointed that Mr. Hutchings should be one. I wrote that, as I say, without Mr. Hutchings' knowledge and without any suggestions from anybody. I thought it was a proper thing for a citizen to do, who knew the valley and who was interested in its welfare. I never suspected I would be called upon here to give testimony in regard to such a matter as that.

Q. Well, was there any further endeavor made to procure the appointment for him? A. That was the extent of my endeavor; and I got a letter from Mr. Boruck—Mr. Boruck, I think, the Secretary of the Governor—

saying that my letter had been received, and that proper attention would be given to it.

Q. Well, what further do you know about the matter of the appointment? A. I don't know anything further except that Mr. Hutchings was not appointed; that is all.

Q. And all you know about the matter was that you applied for an appointment, and forwarded a letter, which was received, and that was the end of it? A. It was not an application.

Q. I mean a suggestion? A. A suggestion. It was the business of the Governor to appoint whom he wanted for that place—whom he thought was proper; and when he thought that some one else was more proper than Mr. Hutchings, I did not find any fault with the Governor for it, nor with the Commissioners.

Q. You have been very familiar with that valley, and your familiarity has extended down to date? A. I go there every year.

Q. What do you think of the management of the valley? A. That is a pretty broad question.

Q. I know it is; but as Mr. Mills said, you are a person who can tell it. I am not trying to flatter you, but we desire to get at what you know about it. It seems to me you are very well qualified to state it? A. Well, I think, sir, in the main, since I have been in the valley, the administration of it has been good. I think the Commissioners, inasmuch as they are human, have made some mistakes, and I think if I had been a Commissioner I would have adopted a somewhat different course of proceedings in regard to some matters.

Q. What suggestions would you make in reference to the management? A. Well; I think a mistake has been made in fencing up so much of the valley.

Q. Give me a sort of idea; unfortunately I have never been in the valley, and I am rather ashamed to say it, and I don't know as much about it as I ought to? A. That is your misfortune. I do not mean any reflection upon the Commissioners, but Commissioner Mills made a remark awhile ago that there were thirty-three thousand acres of land in the valley.

MR. MILLS: In the grant. The grant is one thing, and the valley is another. Now, Mr. Chairman, I wish to say right here that Mr. Brightman gave testimony of people who are, for the most part, entirely ignorant of the condition of things in the valley.

MR. WHITE: It is in the rim of the valley particularly? A. I suppose there are about six or seven hundred acres in the valley proper.

MR. MILLS: How many acres are there in the valley proper? A. I say I suppose, probably, taking the valley down where the Coulterville trail comes in, from that point around by Kenney, where the camping ground is—

Q. What do you call the floor of the valley? A. The floor of the valley I should suppose was about seven or eight hundred acres—I don't know—I may be mistaken.

Q. How many acres are there in the floor of the valley? A. Well, you can call this the floor of the valley where you speak of—

Q. Well, that is capable of being fenced up, or that is capable of being used for a pasture, there are nine thousand acres, are there not? A. No; you are mistaken altogether about there being nine thousand acres on the level of the valley at all.

Q. Well, how many acres are there on the level of the valley? A. Well, I think seven or eight hundred acres, as I said before.

Q. You are wrong.

MR. WHITE: There is the most radical difference between you.

THE WITNESS: I will give you a reasonable opinion for my judgment: Coming up the valley, the cañon of the river, the valley is not more than one tenth of a mile wide.

MR. MILLS: Coming up the cañon of the river where you enter the valley? A. Yes, sir. Where you enter the valley it is not more than one tenth of a mile wide, and it runs up thereafter the width of perhaps a half or three quarters of a mile—there are not a great many acres in that—then it opens out after you get up to the Bridal Veil, that is west of the Bridal Veil there is a little more, and between the Bridal Veil and the Iron Springs there is not.

MR. MILLS: Well, how wide is the valley at that point opposite the El Capitan? A. It is not a quarter of a mile wide.

Q. If the El Capitan should fall down would it reach on the other side of the valley? A. It would shut up the valley; yes, sir.

Q. But would it lodge on the other side. I think the El Capitan is thirty-three hundred feet, and twenty-six hundred feet is a half a mile—now, right opposite the place you spoke of—right opposite the great cliff of the El Capitan house? A. On the south side of the river it comes right down to the river; there is just room enough to build a road on the bank of the river.

Q. Will it take the bridge where the old flat stage goes across the hill-side—but I will withdraw these questions. The object of the questions was to show what proportion of the valley was under fence.

MR. GOUCHER: We will have to have the map here.

MR. WHITE: Well, how large a portion of the valley was fenced in? A. There is a good portion of the floor of the valley that is not fit for anything at all.

Q. How much of that portion of the valley that is susceptible of cultivation is fenced in? A. It is pretty nearly all fenced in. In my judgment, there is a departure from the idea of Congress, which gave that territory to this State in trust in order that it might be for the public use. Now, then, if you fence that up and keep the public out of that, it is certainly not for the public use. I do not say this in any spirit of blame for the Commissioners; I think it was a mistake of the Commissioners, as I said before when I commenced my remarks in regard to this matter: that if I had been a Commissioner, I would have acted within—I would have given the hotels as much land as they wanted when fenced for pasture and for the purposes of an orchard, or something of that kind; but the rest of the valley I would try to keep in as good a state of nature as possible, and leave it for the public in accordance with the design of Congress when they were making that great gift to this State.

MR. WHITE: Now, what are these other inclosed places, other than the place inclosed for the hotel—what are they utilized for? A. It is utilized for the raising of hay and grain, etc., which the farmers on the outside raise in great abundance.

Q. These parties who raise grain and hay are parties who raise it on their own ground, and sell it to tourists who come in there? A. The Commissioners rented this land to various parties: they rented a portion of this land to Mr. Harris, and Mr. Harris raised hay on that land, and sold it to the campers.

Q. Do you know anything about the prices they charge up there for their hay and grain? A. Well, I don't think their prices are unreasonable.

MR. MILLS: I would like to ask the witness some questions on that subject. If there were no hay raised in the valley, where would the people

who go in the valley for their own convenience get feed for their horses?

A. They would get feed on this beautiful pasture that would be there.

Q. Is there pasture enough for those purposes? A. Yes, sir; and farmers could convey it there. There are three roads leading to the valley.

Q. What would it cost? A. I don't think it would cost any more than it costs now.

Q. What do they charge a pound for hauling? A. They haul hay in the valley there now and sell it in there for \$40 a ton—2 cents a pound. I think those farmers up there in the mountains should have the privilege to market through that valley.

Q. How many acres are cultivated in hay in the valley? A. I could not say.

Q. Approximately how many? A. Well, I suppose, in the Harris field there must be—

Q. [Interrupting] Is there twenty acres? A. Twenty, or thirty, or forty acres, I am not certain about that.

Q. About twenty acres? A. Twenty, perhaps.

Q. How many are cultivated in grain in the valley? A. I don't know.

Q. Are there ten acres cultivated to grain to your knowledge? A. That I could not say positively: I suppose there is some grain raised there; but they have very nice pastures—you know yourself that the Bridal Veil pasture is a beautiful pasture.

Q. Yes, sir. A. The people who pay the taxes here and in the State, and want to go up to the Yosemite Valley with their own teams, it seems to me should have the privilege of staking their horses, under proper supervision of the Commissioners, and they ought to have some of that feed.

Q. I will now call your attention to the next question. Don't campers who take their horses have the privilege of pasture? A. Very poor pasture. They have to buy hay and grain.

Q. About how many acres are devoted to campers' horses? A. Well, the upper part of the valley.

Q. Is the public excluded from any part of the valley, really? A. It is not any way near as good pasture as in other portions of the valley. The Bridal Veil pasture and the El Capitan pasture are both of them better pastures than the one used by the campers, but that don't answer their purpose, because they all have to buy.

Q. Well, how much pasture do you give to the hotels for the purpose of keeping cows for the purpose of getting milk? A. Well, ten or fifteen acres to each hotel. I would give them all they needed.

Q. Then it is necessary that there should be horses for trail use, and other horses must be turned out at certain seasons of the year. Would you turn them loose? A. No, sir.

Q. Or put them under fence? A. I would put them in a stable, and I would require that the people who keep those saddle horses should get their hay and grain from outside of the valley. I would keep the valley a public park. I think the Commissioners have adopted a wrong policy. I don't think they have committed any crime, but they have erred in judgment, as far as my judgment is concerned.

Q. You were in favor of Mr. Hutchings as one of the Commissioners. You wanted him appointed? A. I wrote to the Governor, as I said, sir.

Q. Were you aware that Mr. Hutchings has been Guardian of the valley? A. Yes, sir; I helped to make him Guardian.

Q. Were you aware of the expense by Mr. Hutchings' responsibilities for the conditions which existed in the valley with reference to fences, etc.?

A. Mr. Hutchings and I have differed radically in regard to his proceedings in the valley many times, and I have opposed him before the old Commission, opposed him in many propositions, and defeated him in some, and helped defeat him in regard to his scheme to get one hundred and sixty acres of the public land in the Yosemite Valley. It would have made him rich if he had got it; but in justice to the people I thought he should not have it, and though I was friendly with Mr. Hutchings, I raised above my friendship in the matter. I have no such friendship as would keep me blind to a man's wrong acts.

Q. You have been very familiar with the valley, and have been sent for to testify here this evening. Do you mean to testify that the valley is in the hands of a ring? A. No, sir; I don't know anything of that sort.

Q. You saw no evidences of ring management? A. Well, I don't know what you mean by ring management.

Q. You must be a very innocent man if you don't know what a ring management is. A. I have never been the subject myself, that I am aware of, of any ring management.

MR. WHITE: Mr. Mills does not refer exactly to that. We are now investigating the present Commissioners. A. I have no personal knowledge of anything of that kind, sir.

Q. Of course we do not speak of any material ring, we speak of one of those occult propositions which is supposed to eventuate into a mental ring? A. I know nothing about it.

MR. MILLS: What criticism would you make aside from this fenced pasture? What criticism would you make in regard to the rights of the public, what has been disclosed to you by your means of observation—what criticism would you make? You may make it personal, if you please—what have I done? A. I think in the main, sir, you have been a very efficient Commissioner, but I think you have made mistakes as well as every one else who is human.

MR. MILLS: I am not so ready to admit that as you are to charge it.

THE CHAIRMAN: I do not think you ought to bring this in, as there are other witnesses here.

THE WITNESS: I am ready to answer any question.

MR. WHITE: I am not speaking of any turpitude; you have given the facts. Do you know anything else you can criticize? A. I have heard this, but I don't know them myself of my own knowledge; things which I would testify to about wrong management, etc., in connection with the Yosemite Valley, I have no personal knowledge in regard to such matters, I suppose it would be hearsay. It would not be proper under the circumstances.

THE CHAIRMAN: I understand you, doctor, to say that you came to the conclusion, and would answer here, that while you do not indorse all of their management, you think they acted conscientiously? A. I think the Commissioners have intended to discharge the affairs of the valley to the very best interests of the valley, and the people that visited it; but I think, as I said before, that they made some mistakes in their administration. The people of the State pay the taxes which support that valley, and which pay for the improvement of that valley, and the people of the State go there in their own teams mostly—those that go to the valley by public conveyance are mostly people from abroad—people of other States of this Union, and people from foreign countries. The Yosemite Valley is the most thoroughly advertised institution there is in the world, I suppose; and a great many intelligent people want to go through and see that valley,

and they ought to go, and I cannot see how it is that Mr. White, the Lieutenant-Governor of the State, has not been there.

MR. WHITE: It is on account of my poverty. I have been scared to go from what I have been told.

MR. ROTH: I would like to ask one question: Suppose these fields were not fenced in for these saddle train purposes, wouldn't there be a higher charge for saddle horses; or, in other words, wouldn't the public have to pay more for saddle horses? A. I don't think that enters in the case at all, but I will tell you, the valley was given to the State of California in trust for a public park; now, I say, it ought to be maintained as a public park, and ought not to be maintained as a farm for money making in any sort, or anything of that kind. It ought to be for the benefit of the public at large, and the people of California in particular, and the people of all the other States that want to go through the valley, and people from other countries, if they want to go through it, they ought to be permitted to roam at large over that ground, and see the beauties and wonderful sceneries that there are there. I think it is the mistake of the Commissioners, although not a crime. I do not think there is any ring business or anything of that kind about it, but I think their judgment and mine differs as to that part of the administration of the valley. Now, I want to say just one word more: The people of the State of California pay the taxes; the people of the State of California pay the taxes which built the bridges and made the roads and so on, and they by all means ought to have the privilege that the laws of Congress and the laws of this State in making the grant gave, and the law of this State in accepting the grant, gave to the public, namely, that that ought to be a place for the free use of the public; that is what it was intended for, and I think the Commissioners have circumscribed the rights of the people to a certain extent; but in that I think they have erred in judgment, and that is all on that point.

MR. ROTH: You think, then, that the fences have destroyed the beauty of the valley? A. Oh, I don't know; I think that a country not fenced is more beautiful than one fenced; I think in the state of nature it is better.

Q. Does the presence of the fences reduce the grandeur of the scenery in any way? A. It does not reduce the grandeur of the cliff.

Q. Does the fences prevent free travel through the valley? A. Yes, sir; they prevent free travel. You cannot jump a fence.

Q. How many miles of turnpike road is there below? A. More than eighteen—eighteen or twenty.

Q. To what extent do those few fences prevent this world from enjoying the splendor of that scenery? A. It don't prevent them from enjoying the scenery.

Q. It does not prevent them from enjoying any of the scenery? A. No, sir.

Q. Or any scenic effect? A. No, sir; but it curtails the right of the people to that valley.

Q. How much of a right?

MR. ROTH: In other words, you think it would be better just to turn everything free like it is everywhere else in the mountains, so any one could go in there with the stock if he pleases? A. No, sir; I do not. I say under the proper administration of the Commissioners if you enter with a two-horse team, and want to camp and tether your horses, you ought to have the privilege, under the direction of these Commissioners and under the special supervision of the Commissioners, you ought to have the privilege of tethering your horses in that valley, say in the Bridal Veil, if you want to.

MR. MILLS: Well, wouldn't all of them that went in first have the best of it? A. Well, people ought to go first; that is all.

Q. The last one might find it very short? A. They ought to go first and get the best.

MR. WHITE: Well, that is all, doctor.

THE CHAIRMAN: That is all, doctor. We will excuse you now. We have no more questions to ask you.

GEORGE BARNES.

Sworn.

MR. WHITE: Where do you live? Answer—In Jacksonville, Tuolumne County.

Q. Have you ever lived at Yosemite? A. Yes, sir.

Q. When; during what period? A. Well, I was there working making the roads, and been there the last eight years, excepting one.

Q. What have you done in the valley? A. I am a working man in the valley.

Q. What is that? A. I am a working man.

Q. But what have you done; have you done work in the valley? A. Yes, sir.

Q. For whom? A. The Commissioners of the valley.

Q. For the Commissioners? A. Yes, sir, for the Guardian—Dennison—Mr. Dennison.

Q. Mr. Dennison? A. Yes, sir.

Q. When did you work for Mr. Dennison in the valley? A. I worked last season.

Q. Did you work for Mr. Dennison in the valley last summer? A. A year ago last summer.

Q. Doing what? A. Well, we were fixing trails and roads.

Q. Well, were you paid for your services? A. Yes, sir.

Q. Did you experience any difficulty in getting your payments? A. Well, no; I waited for it for some time—for two or three months for the pay, a little overtime, that they said they would pay us.

Q. Who said they would pay you? A. I forget his name—Goucher.

Q. Well, you were employed by Mr. Dennison? A. Yes, sir.

Q. And employed by the day? Were you employed by the day? A. No; I was employed right along for the season.

Q. Well, how—by the month—were you to be paid so much a month, or so much a year, or how? A. So much a month.

Q. How much a month? A. \$65 a month.

Q. And how long did you work? A. Well, I worked for Mr. Dennison three seasons.

Q. Well that was how much each season—how many months each season? A. Well, I cannot recollect just now.

Q. Well, can't you tell about it? A. Well, I worked along there about April until near November.

Q. And you got \$65 a month all that time? A. All excepting this last summer. This last summer I came out in July.

Q. Well, I say you got \$65 a month, did you, during that time? A. Yes, sir.

Q. You were paid your money? A. Yes, sir.

Q. Did you complain about not getting it? A. No, sir.

Q. Was there anything irregular or improper about the three months' delay? A. No, sir.

Q. Have you complained about this matter at all, or told anybody that you were mistreated? A. Well, I complained a little. I got about three months' board there, and I did not like for them to keep saying I was in debt for board, and I asked for it.

Q. The man you owed the board to wanted the money from you, and you wanted the money from them? A. Yes, sir.

Q. Mr. Dennison had some difficulty in getting the money? A. I think he had difficulty in getting the money.

Q. You do not pretend to say he had the money and did not pay you, or misappropriated it? A. No, sir.

Q. There was nothing very extraordinary to your mind, then, about your not getting the money in three months, was there? A. No, sir.

Q. How much were you kept out of for three months? A. I don't know exactly how much. I may have been off a day or two.

Q. Well, was it not only one month's wages the payment of which was delayed? A. It was more than one month, it was three months. It was April, May, and June, and up to the fifteenth of July.

Q. You commenced working in April, when did you commence getting any money? A. I got a little money in June.

Q. How much? A. About \$75.

Q. You commenced working in April? A. I commenced working in April.

Q. What time in April? A. I commenced working on the ninth of April.

Q. Then the ninth of June there was two months due you? A. Yes, sir. There was May and June.

Q. \$130, and you got \$75; there was due \$130 in June? A. There was May and June and up to about the twentieth of July.

Q. And you got paid, didn't you, about \$75? A. I forget what I did get in June.

Q. Well, of course I am trying to get your best guess at it. You did not work for \$75 a month. Now, let us get down to this thing. How much did you work for a month—you recollect that? A. \$65.

Q. And then you were paid more than a month's wages? A. No, sir.

Q. Then you could not have got \$75, could you; that is a patent proposition? A. I forget what I did get; I don't know whether I got my old book here or not.

Q. Just tell us in plain English, and do not compel us to extract it from you. Just tell us how much you were delayed, as near as you can get at it, and what there was about it? A. I think their payment was \$47 50, if I ain't mistaken that there month, working from the ninth to the last of the month.

Q. The last of what month? A. April the first I went to work.

Q. Well, when did you get that \$47? A. After they went below.

Q. About what month was that? A. Well, I think it was about the last of June.

Q. Well, when did you get the balance of the money? A. Well, I got the balance of the money of a hired man. When I left there was \$150 coming to me.

Q. There was \$150 coming to you? A. Yes, sir.

Q. And you got \$47 first? A. I got \$47 first, and there was \$155 coming to me, and I gave him \$5.

Q. \$150 and \$47—that is all you got, was it? A. This here Mr. Dennison was there a year before, and he paid me.

Q. [Interrupting] That was the year before? A. Yes, sir.

Q. Did you get all that money? A. I got all but \$34.

Q. What was the reason you did not get that? A. I don't know.

Q. Who did you work for—Dennison? A. Dennison.

Q. Was the bill ever approved? A. I believe it was published—something published about it in the paper.

Q. Well, did he approve of it; state it was all right? A. I did not see Dennison.

Q. Didn't you see Dennison? A. Yes, I did see him; he said it was all right.

MR. GOUCHER: This witness was worked by Mr. Dennison the same as any other man at so much a month; and Mr. Dennison worked them over eight hours a day. When I went on the Commission I held they were entitled to work only eight hours, and that they were entitled to extra pay for the time they worked over eight hours. I believe I read it to the Commission, and the Commission allowed for the extra time, and asked the Guardian to prepare a tabulated statement, showing the number of hours extra work over eight hours a day that these several men had performed.

MR. WHITE: Was he paid that \$34?

MR. GOUCHER: We ordered it paid; but I don't know the state of it now.

MR. MILLS: I think it was paid. Senator Goucher brought the matter before the Commission, and we allowed the men two hours a day extra time when they had been worked by the Guardian ten hours a day. Under the law eight hours a day was to be a day's work. Then he had to get up a tabulated statement, and some of the men had gone out, and the finances were disturbed by this new element coming in it.

MR. WHITE: The trouble is, I was examining him about 1888, and he got off the track. I will start with 1887 now.

Q. Did you have any complaint prior to 1887? Did you make any complaint about anything? A. Oh, yes; we sent out to Goucher last year—

Q. [Interrupting] Now, I want you to tell me about 1887. Did you have any objection to urge before 1887? Do you understand that? A. No.

Q. Why don't you answer a plain question? You know what 1887 means, don't you? A. Yes, sir.

Q. Do you know what before means when I say before 1887? Do you know what I mean? A. Yes, sir.

Q. Now, have you any objection, or, to use words that you will understand better, do you make a kick about anything before that time? A. No, sir.

Q. Now, then, the first matter that you complained about was in 1887; there were thirty-four days which they never paid you? A. Yes, sir.

Q. Now, did you ever say to Mr. Dennison, "I want that money," or "Why don't you pay me?" A. No, sir.

Q. Why didn't you ask him something about it? Did you ever ask him for the money? A. I was going to ask him the next time he came up. He has been down below, and I did not see him until the other night.

Q. Did you ever write to him about it? A. No, sir.

Q. Suppose you go and see him to-morrow, or on the eleventh, and probably you will get your money. Did you ever say anything about the money? A. No, sir; that is all they pay the Commissioner.

Q. You don't know that they are going to pay you? A. No, sir.

Q. You have not asked them for the money? A. No; no further than last season.

Q. I am speaking about this \$34. Did you ever ask either of the Commissioners or Dennison for the \$34? A. Yes, sir. The crowd were all together, and sent Archie up to Mr. Goucher to bring him down.

Q. That was last season? A. Yes, sir.

Q. Since that have you got any of the \$34? A. No, sir.

Q. You have not gotten that at all? A. No, sir.

Q. In 1887 they owed you \$34 06. Is that the fact? A. Yes, sir.

Q. Well, now, we come to 1888. Do they owe you anything for 1888, independent of this \$34? Is there anything for 1888? A. No, sir; they do not.

Q. Well, they owe you the \$34 for 1887? A. Yes, sir.

Q. Now, when did they settle with you for 1888? A. This Louis, one of the men, settled with me.

Q. When? A. This was in July, about the eighteenth.

Q. About when did you stop working? A. About the eighteenth or twentieth of July.

Q. And when you stopped working they paid you up in full? A. Well, one of the men did. It don't make any difference. It was the same kind of money. Yes, I was paid in full.

Q. Well, what is there about the way you was paid in 1888, that you objected to? What is there that you think is wrong about the way they paid you? I am trying to get all the facts from you. If there is any objection you have to make, tell us. A. I don't know of any, more than the man with whom I boarded; he might go around and tell everybody that I was in debt, so and so, for board. That is the reason I ask for it.

Q. It was a sort of reflection on your character as a man who paid his debts? A. Yes, sir.

Q. Well, did Mr. Dennison have any of this money to pay you, or do you know whether it was delayed? A. I have not seen Mr. Dennison since he gave me that until the other night, and then he was off in a hurry.

Q. Mr. Dennison was not in fault, and you had no one to communicate with about it? A. No, sir.

Q. Did you ever talk to Mr. Goucher about it at the meeting they had last June; it was just before you were paid, was it? A. Yes, sir.

Q. What did they tell you when they spoke to you about it? Mr. Goucher said you ought to have had that some time ago; I believe he said he thought it was paid; I would not be sure; but he said you ought to have that some time ago; if you have not got this \$34, you go over and see these parties and they will doubtless pay you. You had better see Mr. Dennison about it. Who wrote that out? A. Mr. Dennison.

Q. That is Mr. Dennison's handwriting? A. Yes, sir.

MR. GOUCHER: You were working there at the time the June meeting of the Commissioners was held in 1887, were you not? A. Yes, sir.

Q. Were you not; you and the other workingmen here at that time after we had instructed the Guardian not to have you work more than eight hours? A. Yes, sir.

Q. And after we had also decided that we would pay you for the extra time over eight hours that you had worked before? A. Yes, sir.

Q. Now that extra time you had worked before the June meeting—the time over eight hours—it amounted in your case to \$34, did it not? A. Yes, sir.

Q. And that is the part that remained unpaid? A. Yes, sir.

Q. You heard him order it paid? A. Yes, sir.

Q. You heard that I brought that matter before the Board? A. Yes, sir.

Q. At the June meeting last year—the meeting last year that you referred to—you and a number of the other workingmen who had not been paid, called him from the hotel down to the Guardian's porch there? A. Yes, sir.

Q. You sent Archie, you say? A. Yes, sir.

Q. And told him you had not been paid? A. Yes, sir.

Q. Is not that all there is about it? A. Yes, sir.

Q. And I told you I would see what was the trouble—that it had been ordered paid the previous year? A. Yes; you said you thought it had been paid; that it ought to have been paid before this time.

Q. And I told you I would see where the fault was. A. Yes, sir.

Q. And that was the money for the over eight hours' work a day in the preceding year? A. Yes, sir.

MR. WHITE: Now, was that eight-hour allowance made in 1888?

MR. GOUCHER: Well, we met in June, 1888, and I had ascertained that the Guardian was working the men eight hours a day or more than eight hours. There was some difficulty in regard to the appropriations—in regard to money on hand. It was a thing that had not been expected and the money was not on hand to pay it at the time. That is the reason it was not paid at the time, but it was ordered paid last June.

MR. MILLS: When we met at the June meeting in 1888 we found that the Secretary who had served prior to that time, and who now resides in Los Angeles, had not kept the books for five or six months, and all these matters were to be straightened up and these bills to be paid. This money was money that came in in the year 1887 and therefore it complicated the finances of each year. You understand the finances of each year are paid out for the work of that year.

MR. ROBINSON: When you were paid how much money was owing by the Commission? When Louis settled with you, how much money was due you outside of this back pay? A. \$155.

Q. Who was Guardian when you were paid that money? A. Mr. McCord.

Q. Mr. Dennison was not Guardian, nor didn't have anything to do with this payment? A. No, sir.

Q. What did Mr. McCord say when you asked him for your pay? A. Mr. McCord said: "I have not got it, but if you want to borrow some money to pay for your board, I will let you have it." I said to Mr. McCord, I do not do things that way, and I guess I will quit, just that way.

Q. Louis paid you how much money? A. \$155. He paid me \$150, and I gave him \$5 for paying it.

MR. WHITE: You gave him \$5 for paying it. You paid him a commission for collecting it from them? A. I don't know whether he collected it from Mr. McCord.

Q. Did he get the money which he paid you from Mr. McCord? A. I don't know.

Q. Did he say he did? A. I have not seen him.

Q. Well, you did see him when you got the money? A. Yes, sir; he paid me.

Q. You have no idea where he got it? A. I have no idea whether he was paid or not.

Q. When was that? A. That was about the last of July.

Q. Of what year? A. This year, 1888.

Q. 1888? A. Yes, sir.

Q. But do you know where he got that money that he gave you? A. Oh, he has worked there for several years, and he has always got some money.

Q. Who is that? A. This is an Italian by the name of Louis.

Q. Well, this you paid him was interest on the loan? A. Yes, sir; the \$5 was interest.

Q. He did not borrow any money, as I understand it, from Louis. I will simply make this statement that this \$5 he paid him was the commission—

Q. MR. MILLS [Interrupting]: All right; impeach him.

THE WITNESS: This is the money that was owing me from Mr. McCord for working.

MR. WHITE: You say this man Louis, or somebody, gave his money to you. It was his own money; is that so? A. He did not loan it; he gave it to me as my wages.

Q. Where did he get it? A. He has always got money—he has got money.

Q. Was it the money you earned, or the State money? A. I cannot state whether it was State money or not.

MR. BOGGS: It seems to me that it was this way: that some one bought his time, and he gave him \$5 as a discount? A. That is it.

MR. WHITE: Well, if he bought his time, and gave him his money, he just simply discounted it. It amounts to the same proposition as if he had loaned him the money and took \$5 as the interest; there is no difference.

Q. Was this man working for Mr. McCord? A. Yes, sir.

Q. This man who got the \$5? A. Yes, sir.

Q. Why didn't you go and get the money from the Commission instead of getting it from him, if you had earned it? A. Well, I wanted to go away, and I asked Mr. McCord, and he said he did not come up, and I wanted to go on the outside to attend to business—I had to go.

Q. Then you simply went to this man whom you knew had money of his own, and you gave him your claim against the Commission of \$155, and he paid you \$150 for that claim? A. Yes, sir; that is it.

MR. WHITE: That is all.

MR. MILLS: That is all.

MR. ROTH: I would like to ask these Commissioners a question: Was it understood when you hired the man, when he was to get his pay?

MR. MILLS: The Commissioners appointed an Executive Committee under the law. There is no member of the Executive Committee present. I have not been a member of the Executive Committee for a number of years. The Commissioners simply met in the valley once a year, but the Executive Committee transacted the details of the business. The appropriation is available at two different times of the year—the first of January and the first of July—and no money can be drawn except in pursuance of the appropriation. The result is that sometimes the fund is exhausted, and it must be paid out of the additional appropriation, or the appropriation which may be made available at the end of the semi-annual term. Now, here are the circumstances related here: if this matter had come before the Commission, we would have called upon the Secretary to explain why the men had not been paid; but it appears from Mr. McCord's statement to this gentleman, that no money for the purpose of paying it was available just at that time. I had myself offered to loan him money for necessities, but he sold his time to a fellow workman; and no doubt, shortly after, this claim was paid. But at times there was no money in the fund, because it cannot be drawn except at intervals, when there is no money in the treasury except at stated times.

CHARLES B. ATKINSON.

Sworn.

MR. WHITE: Have you ever worked in the Yosemite Valley? Answer—Yes, sir.

Q. Have you ever worked for the Commission? A. Yes, sir.

Q. What have you done in that valley? A. Well, I have done almost every thing. I have worked there by the day under Mr. Clark, under Mr. Hutchings, under Mr. Dennison, and I was Mr. McCord's foreman while he had charge, until last September.

Q. While you were foreman, or at any time, state whether you saw anything that was the subject of criticism, or that might be made so? A. Well, the only thing, or the main thing in my opinion, is that the management of the valley is not half strict enough.

Q. Well, go on and state where you think it is defective? A. Well, I think they ought to make iron-bound rules that must be obeyed. I know the policy at present is not half, to quote from the Treasurer's own words, the former Treasurer, Dr. May, that the strong arm of authority should put away the policy of milder measures first tried, and which do not work in the Yosemite.

Q. Well, what is it that you have seen that leads you to the inference that there is something necessary for a more rigid character? A. Well, it is the peculiar place, and the peculiar people.

Q. Well, what is there? A. Well, I can't particularize.

Q. You cannot tell anything then? A. Well, no; I cannot come down to any particular thing. I know everything there. I have been connected with it for about ten years.

Q. What have you seen any of them do, which warrant some kind of iron-clad interposition? A. Well, I know the Guardian was not vested with full authority.

Q. What Guardian? A. Mr. Dennison particularly; to carry out even his own rulings everything had to be before the Board.

Q. Your idea was that he should have —

Q. [Interrupting] He should have some discretion? A. Yes, sir.

Q. Well, now, what sort of matters? I suppose, of course, he had some kind of authority; if his house caught fire, he could put it out. But what was there particularly that you saw that you thought he ought to do that he could not do? Just tell me something. If there was so much of it you should recollect a portion? A. Well, we will take Mr. Harlow's case, an application, it was doubtless referred to the Executive Committee.

Q. Do you know about that? A. No, sir; I don't know about that, but I do know of a case where a man—a blacksmith, George W. Harlow—applied for permission to sleep in a shed belonging to the butcher. He wrote on to the Executive Committee for permission to have them grant Mr. Harlow permission to sleep in the shed, and the Commission granted Mr. Harlow permission to sleep in the shed, and he slept there.

Q. You think the Guardian ought to have had authority to grant this permission himself, because it might get to be daylight before he could get word back from the Commission? A. Yes, sir.

Q. I might agree with you about that, but I think it would be a good plan to carry his commission along with him if he goes up there. Now, what other particular matter did you observe besides that—anything about the management of the men? A. No, sir; Mr. Dennison was a perfect gentleman in every way, shape, and manner.

Q. Did you ever see anything about the way he conducted the work, or the payment of compensation, or anything of that sort that you could

criticise? A. No, sir. In regard to compensation, the bills have to go to San Francisco to the Treasurer. He itemizes, I understand, and I think he puts them all in one bill, and sends them all here, and they are examined, and then the Controller issues his warrant, and they go to San Francisco, and he draws his money and deposits it in the bank, and we get certificates of deposit in the valley after awhile.

MR. MILLS: You understand that all the bills have to be passed on by the State Board of Commissioners?

MR. WHITE: Then, when the claim travels around a circle and makes a loop, and gets back there, it comes in the form of a warrant? A. No, sir; it comes in the form of a certificate, a check, or a certificate of deposit.

Q. You do not have to pay anything for getting that certificate of deposit; you cash it for its face? A. Well, you cash it if you find anybody that wants the money; and if you find anybody that wants it, they generally want something for cashing it.

Q. When you get the certificate back, you have to pay something? A. Yes, sir, or have to pay something on them when they are sent by express. As a usual thing, they are always glad to take them.

Q. They are glad to take them to send them on to pay for bills? A. Yes, sir.

MR. MILLS: The checks are always at a premium in the valley.

MR. WHITE: If they pay a discount, it was not the fault of the Commission, anyway.

MR. MILLS: Hotels frequently require people to pay in checks.

MR. WHITE: Is there anything else that strikes you as involving criticism? A. I don't know what I was called for, nor why I was called.

Q. You were called to tell if you know anything about this matter. If you have anything to say which would tend to show that the management is improper in any regard, state it? A. Well, there are, I think, at least ninety acres under cultivation there, I would state. I know Mr. William F. Coffman put in nine hundred pounds of grain there himself.

MR. BOGGS: Seeded to what? A. To hay.

MR. WHITE: Ninety acres was seeded? A. Yes, sir.

Q. How many are inclosed? A. Well, I really could not say; really the best part of the valley is inclosed, and it is simply the best part of the valley because it is inclosed. The outside of the fence is all grown up with thickets and briars and pine brush.

MR. MILLS: That would have been the case with the other if it had not been inclosed? A. Yes, sir.

THE CHAIRMAN: In your judgment, fencing it has been an advantage? A. To a certain extent; but if the fence was taken down, and the same care was put on the land that was put on what was fenced, the whole valley would be the same.

MR. WHITE: Well, briars don't get through the fence? A. No, sir; they don't permit them to grow. That is simply a question of cultivation, or keeping them down. The fence has no effect, but the mere circumstance that inside the fence has been cultivated, and naturally these things do not grow there.

MR. MILLS: Now, Mr. Chairman, I desire to have this gentleman's testimony in regard to this matter.

MR. WHITE: I am getting at it.

MR. MILLS: Well, it has been testified to here by Dr. McLean that there were too many fences, and the beauty of the valley was destroyed by the fences, and I want now to ascertain to what extent that valley grows up,

wherever it is neglected, in briers and cottonwood, and if fences had not existed there, whether or not there would be a tangled wilderness.

MR. WHITE: Well, what I am getting at is the cultivation inside of the fence; if the growth was kept down outside of the fence by the same cause as inside of the fence, it would be the same thing? A. Yes, sir. The inclosure was rented to private individuals, and they had means to keep it down, and the Commissioners unfortunately have always been short of funds.

MR. MILLS: One of the charges against the Commissioners is that they have been cutting the brush and devastating the valley, and felled a large number of trees, and a great many things; and there seems to be a prevailing sentiment against cutting anything in the valley. I would like to have you ask him as to this devastation that has been talked of—the cutting of timber, etc.

MR. WHITE: Well, tell us all you know about cutting timber? A. Well, I know when I went in the valley there was a sawmill there that had been run—lumber had been cut.

Q. Who put up that sawmill? A. Mr. Hutchings.

Q. Mr. Hutchings cut the timber? A. I presume it was cut under his orders; but as long as I have been there the sawmill has never been run. What timber we have cut is for bridges mostly.

Q. They sawed the timber for the hotel, didn't they? A. No, sir. That was outside of the valley, on the top of the hill.

MR. MILLS: They sawed it on government section—they stole the timber?

MR. WHITE: It was not a railroad section?

MR. MILLS: No, sir; if it had been I would have taken care of it.

THE WITNESS: We had to get timbers out for bridges, and we used Douglas spruce, and it is hard to get, it is up in the rocks outside of everywhere; it does not grow in the meadow land. Then I know there has been a great deal of complaint in regard to getting certain oaks. I know that those oaks were dead and good for nothing, with the exception of about three trees which were cut out to clear the view. There were a number of trees cut out to clear this view, but of those there were only three oaks that were good trees.

Q. Were the oaks dead? A. The oaks were dead, and the top covered with mistletoe, and the limbs were blown off.

MR. MILLS: They were in a state of decay? A. Yes, sir.

Q. What about the site of the Stoneman House? A. There were a number of trees removed.

Q. For what reason? A. Well, they were removed to keep the litter away from the house and to save the house. There was danger of the trees falling, and it was to prevent them falling on to the house. There was some dead oaks there removed, and one or two trees cut by the house; there was some pines.

MR. WHITE: Well, is that all the devastation of timber, or the cutting down of timber, that has been done there? A. In some of those thickets, in a few places, we trimmed out the pine thickets; we pruned up the trees, and left them about fifteen or twenty feet apart as little growths; we cut out the underbrush.

MR. MILLS: Suppose all those fences were pulled up, and nature, as the man said about the blue gondolas, was trimmed to take its course, what would be the condition of affairs in the valley—would there be pasture which could be utilized by the public? A. No, sir; I don't think there would be.

Q. You think that with the exception of the places where the growth is kept down there is no pasture in the valley? A. Well, in some of those inclosures where the brush has not been cut down, it has overgrown so it is hardly fit for a pasture now.

Q. Well, is there a good pasture in the valley outside of these fences? A. No, sir; and there is not very good pasture there anyway, only when the water is up. As soon as the water goes down and the river is dry, the grass dries out.

Q. Well, can you raise hay anywhere in the valley except within these inclosures? A. Not without clearing it.

Q. How much land is there in the valley in your judgment? A. Well, it has all been surveyed and staked off, and mapped and platted.

MR. BOGGS: What length is there in it? A. About seven miles.

Q. And how wide? A. Well, it is longer than seven miles from end to end; and to take the main floor of the valley it is about seven miles—the meadow land.

Q. How many feet wide will it average? A. I could hardly tell. It might average a mile, I would think; but then those rocks fall from the walls in some places to the river, and almost fills up the entire bed of the valley; where the cañons come down, there is a large amount of sand.

MR. WHITE: How much of that land do you think could be cleared for pasture, or for any purpose?

MR. MILLS: Suppose you take the Cascade Road?

MR. WHITE: I have never been there, and that does not help me any.

MR. MILLS: Then take it up toward Register Rock? A. I should think you could get at least two thousand acres. It is a hard matter to judge of land in that shape.

MR. MILLS: It will average more than a mile in width, will it not? A. I don't think the land that you could pasture with.

Q. The pine land and all together averages more than a mile in width—now, you remember five thousand two hundred and eighty feet is a mile? A. Yes, sir.

Q. That Cathedral Rock which stands nearly opposite the old El Capitan—each of those are about three thousand feet high. If they should fall from the valley, there would be room for them to lie down, would there not? A. Yes, sir; I should think so.

Q. Well, there you get over a mile. A. And you travel a good quarter of a mile before you get to the base.

Q. The rocks go out into the valley occasionally, but I will take your statement of two thousand acres. How many acres are there fenced, do you say? A. Well, perhaps two hundred and fifty.

Q. Have you ever known of any cause of complaint on the part of tourists, with reference to charges in the valley, or of the manner in which they were treated in the valley? A. Well, I know that there have been complaints made, but I cannot recall any particular instance.

Q. Have any tourists ever complained to you there? A. No, sir.

Q. Have you ever heard them talk about it—persons visiting the valley? A. I know everybody in the valley, and everything that goes on, I know about it; it is just like a little country town.

Q. Did you ever see anything going on in that valley while you were there that was at all questionable? A. No, sir.

Q. And your opinion is that the management is first class? A. Yes, sir. I do not see really how it could be as well as it is, and to make it better in any way, shape, or manner there have got to be more stringent rules. In regard to those hay ranches and saddle trains, they employ a great many

men; and there are three or four months that they have nothing to do, and you have got to have something to keep them busy.

Q. Are those guides in the habit of fleecing people at all? A. They have no chance, no opportunity whatever.

MR. MILLS: Who does fleece anybody down there? A. I don't know.

Q. Why do you say these guides do not have any chance? A. They do not handle any money whatever.

Q. Do you know whether they are not in the habit of collecting money from people? A. Well, the guides always do the very best they can for the party, to get their little "perq." as they call it.

Q. One man may have a more successful method for making his "perq." than another? A. It is their treatment of the visitor that gets them their perquisite.

Q. Do you think that the most susceptible foreigner would not be in danger of being overcharged? A. No, sir; they do not make the charges; the price is put upon the horses by the State.

Q. The price is put upon the horses by the State for the passengers? A. Yes, sir.

Q. If there was much extortion you would hear about it? A. Yes, sir.

Q. Because these tourists would complain about it? A. Yes, sir.

Q. Have you heard complaint about it? A. I have not.

Q. And you have been there how long? A. Not continuously, but I have been there most of the time for ten years.

Q. And you would be most apt to have heard it? A. Yes, sir.

THE CHAIRMAN: You spoke about timber being cut around the hotel. Do you recollect, or were you in the valley one season there when I was on the Commission, when there was a big cyclone came in there and took one particular place—leveled all the timber? A. Yes; and one of those trees the branches were nearly stripped; there was not a single limb on it, and Mr. Hutchings went nearly crazy because they cut it down.

Q. If the same thing had happened again, wouldn't it be dangerous for the Stoneman House, if those trees had not been cut down? A. Yes, sir.

MR. MILLS: Were you present when the Commissioners decided what trees to cut at the Stoneman House? A. I was in the valley at the time.

Q. Do you remember when they determined what trees to be felled there? A. Yes, sir.

Q. Do you remember that the Commissioners met around each tree, and that the Chairman of the Commission said the question is, Shall this tree be cut? and discussed the question, Is that tree dangerous to the hotel? and if they decided that it was dangerous to the hotel they blazed it, and you gentlemen cut it down? A. Yes, sir.

Q. Great care was exercised in not cutting any more trees than were necessary? A. Yes, sir.

Q. What trees were cut were cut because, in the judgment of the Commission, they might fall on the hotel and crush it? A. Yes, sir; with the exception of a few oaks which were dead.

Q. Were you employed in the valley when the road crossing the valley crossed by the Bridal Veil Fall and passed by seven or eight trees? A. Yes, sir.

Q. You were then in the valley? A. Yes, sir.

Q. Do you remember that the road was subsequently moved higher up, close up against the Bridal Veil Fall? A. Yes, sir; I was employed there at the time.

Q. Who was Guardian when that road was put there? A. Mr. Hutchings.

Q. And it became necessary in order to afford a view of the Bridal Veil Fall to open a vista? A. Yes, sir.

Q. Was such a vista opened by cutting trees? A. Yes, sir.

Q. Who cut those trees? A. By the order of Mr. Hutchings.

Q. Was not there altogether more trees cut by the order of Mr. Hutchings in changing that road than at any other place, and at all other times put together? Didn't it require more cutting away of timber to clear out that vista than all the other cutting away that was done? A. No, sir; I would not say that, because I don't think there was—because there was only one little jog, one little place on the twenty-six miles of road.

Q. One of the charges is that there was considerable timber cut. Where was this timber sawed for the hotel? A. It was cut on Government land.

Q. The timber for the hotel was then cut on Government land? A. Yes, sir.

Q. Was it done by the contractor or by order of the Commission? A. It was done by the contractor.

Q. Who used that sawmill? A. Mowley Abernethy.

Q. Was it off of the grant? A. Yes, sir; that was off of the grant.

THE CHAIRMAN: Up near Gentry's? A. Yes, sir; I think so; I am not positive.

MR. MILLS: They cut a road below to the hotel—the timber down? A. Yes, sir.

Q. Were you cognizant of the fact that the Commissioners paid for the repairs of that road? A. The old flat road? That was used by the valley.

Q. They made that road good? A. No, sir; it was not.

Q. Generally the Commissioners pay the amount of damages claimed to be done the road by hauling timber? A. They report on the road; they keep a man on the road all the time—steadily all that summer.

Q. Is there any complaint made by the tourists there concerning the charges—that is, the amount of charges—or is there general satisfaction? A. Well, some of them complain about certain charges, as, for instance, there is a round trip up by McCauley's—there is some complaint there.

MR. WHITE: Well, what is that charge?

MR. MILLS: What is the charge for a horse for the round trip? A. I think \$5.

Q. How long does it take to make the round trip? A. Well, it takes all day.

MR. MILLS: It saves the tourist two trips; it is equivalent to a two-days trip?

THE WITNESS: It is harder on the horses. It is going a two-days trip in one.

MR. WHITE: How many miles is it? A. Six.

MR. MILLS: And any one mile equals six or seven.

Q. There is some question raised as to granting of exclusive privileges in the valley—they say that is wrong—what would be your judgment in regard to granting as many privileges as they might ask for—take the saddle train business? A. The saddle train business would not be run without a special privilege. In a short season everybody would have horses there, and they would be fighting each other, would cut the rates down to nothing, and then when a privilege went away all the horses would be out.

Q. Would not they sell out to each other? A. Yes, sir.

Q. Any privileges granted to butchers in the valley—how many did the butchering? A. One.

Q. They blackmailed him for the privilege, did they not? A. Yes, sir.

Q. Were you in the valley when the Commissioners adopted a policy growing out of just that condition of things, and upon the report of the saddle train privilege, that they had paid one man \$800 a year—about \$800 a year—not to go in there and rent horses—were you in there when the Commissioners took that up? A. Yes, sir.

Q. When Mr. Mathews, the Commissioner, charged them nothing for the privilege, and they were paying \$800 a year to an outsider not to bring horses in there? A. Yes, sir.

MR. WHITE: How much does he pay to the State?

MR. MILLS: \$600; they pay for the privilege \$600. They blackmail each other and charge the public a blackmail price, and the committee concluded to give special privileges.

MR. WHITE: Were you in there at the time this general competitive system was going on? A. Yes, sir.

Q. And at that time how did the charges correspond with the charges at the present time—the charges to tourists? A. Well, they never were more than they are at present.

Q. They are at the maximum now? A. Yes, sir; if I remember correctly, they were never more than that.

MR. MILLS: The question was fully reviewed by the Commission. Sometimes there are very few tourists come in and other times they come in great numbers at one time. I will ask the witness if the tourists reach the valley in regular parties? A. No, sir; certainly not. Sometimes there would be nobody at all. One month there will be nothing doing and the next there will be a rush the whole of the month.

Q. You must keep horses to the maximum number? A. Yes, sir.

Q. Then you must keep, for the whole month, enough of the maximum number on hand? A. Yes, sir.

Q. And you have got the hotel at full expense when there may be no demand whatever? A. Yes, sir.

Q. So sometimes it is very full and other times there is nobody there at all? A. Yes, sir.

MR. FRASER: How much a month does it cost to keep a horse in the valley? A. If you turn the horses out it won't cost you a cent. I don't keep any horses there. Perhaps Hutchings' books will show.

MR. WHITE: Do you know? If you don't know, say so? A. I don't know.

MR. BOGGS: I would like to ask the witness this question: Do they produce enough on this land that they have inclosed to provide feed for the horses, or have they got to buy some? A. All the grain is hauled, and a great deal of hay.

MR. WHITE: That they use for these horses? A. Yes, sir.

Q. Then the valley does not produce enough even to support these horses? A. No, sir.

Q. Do you suppose it produces 50 per cent?

Q. Do you know what the price of hay is after they haul it in? A. I think hay is delivered at from \$40 to \$50 per ton.

Q. And the grain is what figure above the market price? A. Well, ground barley is just about 3 and 3/4 cents.

MR. MILLS: How long does the season last when they have the use of these horses—an average season? A. Well, the season does not really commence until along in May.

Q. And it closes out what time? A. Well, it closes before the fourth of July; early before the fourth of July.

MR. MILLS: I want to call Senator White's attention to this testimony. The witness says that the season commences about May, and closes along about the fourth of July. Now, I want to ask you, is it necessary to keep horses the year around to supply that period of time? A. Yes, sir.

Q. Then the expense of the horses for the whole year must be charged to that season; from May to July? A. Yes, sir.

MR. WHITE: That would hardly be, because I suppose the horses are not prevented from going somewhere else and doing something else the last of the year?

THE WITNESS: What would they do; they are saddle horses.

Q. They are kept there all the time? A. Yes, sir. Along in the fall they send the work horses up in the Little Yosemite, out to pasture.

Q. And keep the others right in the valley? A. No, sir.

Q. Through the winter? A. Not through the winter; they send them out to the ranch.

MR. MILLS: But they have to keep them the whole year, and it is not a class of horses that can be used in any other work; they are a peculiar class of saddle horses, and not horses that can be used for saddle horses generally.

MR. BOGGS: I suppose they are used for three or four months in the valley, and fed there at a higher rate of expense, perhaps 200 per cent more, than in this valley.

MR. MILLS: Sometimes a large party will come in in September, and the privilege would be violated if they did not keep their horses there for any emergency.

MR. ROBINSON: Do you remember of meeting me in my studio in July? A. Yes, sir.

Q. Do you remember me asking you something about the State work and how many hours they work? A. Yes, sir.

Q. Do you remember your telling me the men were worked eight to ten hours? A. Yes, sir.

Q. That most of them, when they went to that agent, had to agree to work ten hours or they would not take them at all? A. I told you that there was a tacit understanding that they would work ten hours, and they were paid by the hour.

Q. And do you remember also of telling me and furnishing me a list of the names of those who were about to be discharged on Saturday night? A. I remember of your telling me that you thought it was bad treatment.

Q. Do you remember telling me you thought it was a great shame that American men should be turned off to keep Italians on? A. Yes, sir.

MR. MILLS: They were then working by the hour? A. Yes, sir.

Q. And running work ten hours? A. Yes, sir.

Q. But they were all paid for all the work they did? A. Yes, sir; they were originally paid there \$2 50, and they worked ten hours a day. The old time hands that had been employed got \$3 12½, and the new hands got \$3.

Q. And you told Mr. Robinson that it was an outrage to employ Italians? A. Yes, sir.

Q. Is not an Italian a man that a white man is bound to respect?

MR. WHITE: I thought an Italian was a white man.

THE WITNESS: I did not say Italians, I said aliens.

MR. MILLS: Then a man has to be born in America to have a right to work in the valley? A. I thought the law was, there should be no aliens on public works.

Q. It was a shame for a man not to be born here? A. The men sent their money home to foreign countries, and men with families here should go hungry.

MR. ROBINSON: You also remember telling me that the men had to be driven? A. Well, it is out of my head now.

MR. WHITE: Let me ask a question: Did I understand you that the men had to work ten hours a day, or they would not employ them? A. Well, you could quit if you did not want to work.

Q. I understand that, of course, but you had to take that alternative, had you? A. Yes, sir.

MR. ROBINSON: Do you remember telling me that Mr. McCord required you to drive the men; that they were not working fast enough, and that you would resign rather than drive those men? A. Yes, sir.

Q. That they were mining men and not accustomed to that sort of thing, and you did not want to take the job and drive them? A. He and I got in a dispute. He said the men ought to work harder, and I ought to drive them, and I said I did not think the men needed driving, and he said very well, you won't do for my foreman.

MR. WHITE: You thought the men were working well? A. Yes, sir; doing very good work, one and two off together on the trail.

MR. MILLS: In his judgment they were not doing enough? A. In my opinion he was only talking.

MR. BOGGS: Did Mr. McCord tell you to drive the men, or hurry them up? A. He said, "drive them;" those were his very words.

Q. Did you take it in its offensive sense, or did you understand that he meant for you to hurry them up? A. Well, I took it in its offensive sense at the time—I was angry at the time—although I don't really suppose he meant it.

THE CHAIRMAN: Did he tell you to use a whip, or goad stick, or anything of that kind? A. No, sir. Mr. Chapman was in there at the time and he had charge of the work.

MR. MILLS: Did he require a guardian to get more work out of the men? A. Mr. Chapman was perfectly satisfied with the work the men were doing.

MR. WHITE: Were there any gentlemen from the Flowery Kingdom, otherwise called Mongolians, working there? A. Not except some few employed in some of the hotels.

Q. There are some few in the hotels? A. Yes, sir.

Q. How many are working there in that occupation? A. Well, in the summer time, in the hotel season, I suppose there were half a dozen.

Q. They do the cooking, I suppose, and dish washing? A. The dish washing and laundry business, I guess, principally.

Q. The Commissioners don't hire them? A. No, sir; the Commissioners never hired a Chinaman.

The committee here adjourned until next Monday, February 11, 1889, at seven o'clock and thirty minutes P. M.

IN THE MATTER

OF THE

Investigation of the Yosemite Valley Commissioners.

ASSEMBLY—TWENTY-EIGHTH SESSION.

TESTIMONY.

SACRAMENTO, TUESDAY EVENING, February 5, 1889.

The Assembly Committee on Yosemite Valley and Mariposa Grove of Big Trees met at half-past seven o'clock P. M., for the purpose of investigating certain charges preferred against the Commissioners to Manage Yosemite Valley and Mariposa Grove of Big Trees, by C. D. Robinson. The following proceedings were had:

The clerk read the following charges, preferred by Mr. Robinson:

1. Squandering and misapplying appropriations and public moneys.
2. Forcible breaking and entering of private property.
3. Wanton destruction of public and private property.
4. Cutting and destroying timber in the valley.
5. Burning shrubbery, clearing and plowing up meadows, and allowing persons to do the same for their private gain, thereby doing irreparable damage to the natural beauties of the valley.
6. Fencing and farming out public lands for the benefit of private individuals.
7. Refusing to investigate or consider charges of gross neglect, and incompetence, and destruction of property preferred against Guardian Dennison.
8. Connivance with persons endeavoring to secure all business privileges in Yosemite Valley, and to evict other residents, and debar the general public from just and legal use of the valley.
9. Neglect to prosecute persons for disfiguring and destroying natural features of the valley in open defiance of law.
10. Holding annual meeting with closed doors in defiance of law.
11. Allowing contractors for the Stoneman House to cut and mill timber within the limits of the grant.
12. Open defiance of laws prohibiting the granting of exclusive privileges.
13. Reduction of rentals, to the prejudice of the State's income.
14. Making illegal and arbitrary contracts with laborers, and withholding their wages.
15. Refusal to recognize their own contracts, and to pay balance due on the same.
16. Suppressing and withholding from citizens facts concerning the acceptance of the Stoneman House by the Board, and illegally leasing the same.
17. Cutting wood on the grant and selling to residents of the valley, thereby destroying the natural park timber in defiance of their own rules and regulations, and in violation of law.
18. Official sanction and approval of a return to the vicious toll system of former years, abolished with great difficulty and at considerable expense by the Legislature.
19. Eviction of law abiding and useful families, in aid of monopoly enterprises, thereby destroying the district school of Yosemite.
20. Gross neglect of public roads and trails within the grant.
21. Employment of State labor upon work for private parties.
22. General failure and incompetence of the Board to properly manage the Yosemite Valley for the interest of the State of California, in accordance with conditions imposed by the United States, for the comfort and convenience of visitors from abroad, or for the welfare of residents of the valley.

C. D. ROBINSON.

Subscribed and sworn to before me, this the fourth day of February, A. D. 1889.

DANIEL HANLON, Notary Public.

JAMES GRANT.

Being duly sworn by the Chairman, testified as follows:

MR. TULLY: Mr. Grant, where do you reside, sir? Answer—I reside at Davenport, in the State of Iowa. I stay a large portion of my time at Granite Springs, Mariposa County, California.

Q. How long have you resided in that section of the country, or how long have you been stopping there? A. I have been stopping in California since 1882.

Q. I mean in that section of the country? A. In that vicinity, either at that place or at a mine seven miles from there.

Q. You have been summoned here for the purpose of testifying in regard to some charges that have been made here against the general management of the Yosemite Valley.

MR. TULLY: I don't know that there is anything in the nature of those charges, Mr. Chairman, that confines the witness to any particular time or any particular administration of affairs there.

Q. About what time did you first go where you reside now? A. In 1882.

Q. Mr. Grant, there are some charges here that have been preferred—specific charges made against the management of Yosemite Valley. I understand those charges embrace not only the present management, but all past managements. Any portions of those matters which you may be cognizant of or have had an opportunity to observe, in the management of that valley. The first charge is: "Squandering and misapplying appropriations and public moneys." Do you know anything about the management of the valley there; are you cognizant of any instance in which public moneys have been squandered or misappropriated? A. I know nothing in the world about the disposition of public money.

Q. The next question is, Mr. Grant: "Forcible breaking and entering of private property." Do you know anything about that? A. I know nothing at all about that; nothing whatever.

Q. The third charge is: "Wanton destruction of public and private property." A. I know nothing about that, sir. Perhaps I had better tell you what I do know.

Q. I will go over these, and afterwards we will probably strike something that you do know about. You know nothing about that charge A. No.

Q. The fourth charge is: "Cutting and destroying timber in the valley." That would include everything within the reservation there? A. I know nothing of it.

Q. Cutting down and destroying timber? A. I have not been there often enough or long enough to know about such matters.

Q. The fifth charge is: "Burning shrubbery, clearing and plowing up meadows, and allowing persons to do the same for their private gain, thereby doing irreparable damage to the natural beauties of the valley." A. My visits to Yosemite have never been greater than a part of three days, and I have never been there often enough or long enough to know anything about matters of that kind.

Q. In those visits that you have made there have you observed anything of the character indicated in that charge? A. I have not, sir. When I have gone to Yosemite Valley my mind, as an intelligent, thinking man, has been totally absorbed with the nobility and grandeur of the place, which I think is the greatest now known to human beings; and of course I have given my attention to the grandeur and beauties and splendor and magnificence of the valley, instead of to the management of it.

Q. Did you or did you not, in any of those visits, observe anything of that character—"destroying or burning shrubbery?" A. No.

Q. Did you see anything there tending to destroy or mar the natural aspect of the valley? A. Yes, sir; I have seen things that I thought marred the natural aspect of the valley very much: fences put up around

it, and land inclosed and occupied, as I supposed and was told there, for private parties.

Q. Have you see that? A. I have seen that; yes, sir; and a man cannot go there without seeing it to some extent.

Q. That would go to some extent to that charge. If you have observed anything of that kind, state it, and to what extent, as far as your recollection serves? A. Why, when I have been there I have observed a large field running right close up to the Yosemite Falls; and when I have wanted to hire a horse, they told me they were driving them up from a pasture on the Yosemite Valley, which I did not see; I supposed it must have been inclosed. It has been two years since I was there. I do not remember at this moment any inclosure that I observed, except the one on the left hand side of the road going from Leidig's up to Barnard's.

Q. What was the character of that fence? A. It was a fence inclosing a piece of land that was cleared. There was no large amount of trees on it, if any.

Q. Was it plowed up on the inside? A. I did not observe that, sir.

Q. Was it a wire fence? A. It was a board fence. I am told there are wire fences there, but I have never seen them.

Q. The sixth charge is: "Fencing and farming out public lands for the benefit of private individuals." What do you know about that charge, Mr. Grant, of your own knowledge, or that you have reason to believe? A. I know nothing of my own knowledge; except what I heard one of the Commissioners state last night.

Q. State what your general impression is; state what you have learned from your intercourse with those people regarding the management of that concern with regard to this question? [The clerk read the sixth charge: "Fencing and farming out public lands for the benefit of private individuals."] A. That is the general rumor that I have heard from people who go there.

Q. You don't know of your own knowledge? A. I do not. I suppose those fences—I don't know—those fences that I saw have been erected by the Commissioners. So far as I have any knowledge of their convenience, or the public convenience, the land might not have been leased to an individual.

Q. What impression have those rumors, taken in connection with what you have seen there, made upon your mind? A. They have made the impression on my mind that there has been gross mismanagement there.

Q. What do we understand you to mean by gross mismanagement? A. Allowing privileges to individuals there, in preference to allowing the public free use of the property. I have read the statute. I am a lawyer. I have read the statute donating the Yosemite Valley to the State, in trust. It is for the public use as a place of public resort and recreation.

Q. I was just going to ask you that question: Whether or not, from what you saw there, and from what you learned, whether you believe that those things have been done in violation of the law under which that property was donated to the State and under which it governs the management of it? A. It appears so to me.

Q. You have read the law? A. Yes, sir.

Q. And from your understanding of the law and from what you have seen and heard there, and learned, you believe that it has been in gross violation of the laws governing that place? A. Yes, sir; I think the intent and spirit of the law, and the letter of it, have been violated, in the management of that property.

Q. The seventh charge is: "Refusing to investigate or consider charges of

gross neglect and incompetence, and destruction of property, preferred against Guardian Dennison?" A. I know nothing of it, sir. I never heard of it.

Q. You know nothing of it at all? A. No.

Q. The eighth charge is: "Connivance with persons endeavoring to secure all business privileges in Yosemite Valley, and to evict other residents, and debar the general public from just and legal use of the valley." Now, Mr. Grant, state if you know anything about that? A. I heard one of the Commissioners, Mr. Mills, last night state that they had deliberately given the exclusive privilege to the saddle-train individual and rented it to him for the purpose of feeding his stock. I heard Mr. Mills say so. I had heard it as a rumor repeatedly, but I never knew the fact until I heard him as a Commissioner avow it and undertake to justify it. That is an open violation of the laws of the State.

Q. Which he admitted to you? A. Which he admitted to the committee of the Senate in his argument which he made before them, when I was a witness on the stand, last night.

Q. In any other particular besides this renting, what did you see about renting the saddle trains? A. The saddle-train was leased to one particular individual, for the exclusive use of it.

Q. In other words he had been granted an exclusive privilege? A. An exclusive privilege to furnish saddle horses to persons in the valley.

Q. To the exclusion of others? A. Yes, sir.

Q. Do you know of any other instance in which an exclusive privilege has been granted to individuals and denied to others? A. When I first went to the valley I saw a sign up, "One dollar toll for every person going into the valley." The last time I was there I saw that sign up. I asked Mr. Mills last night if that was true that people were charged toll for going into the Yosemite Valley; if any person was authorized to charge persons toll for going into the valley, and he said Washburn was.

MR. DIBBLE: Who is Washburn? A. He is the Superintendent, and I am told one of the largest stockholders in the Yosemite Stage and Wagon Road Company.

Q. He is the Superintendent of the stage company? A. Yes, sir.

Q. Where is this toll charged and collected? A. In traveling in the valley, I understand; for the roads in the valley.

Q. Where is it collected; where is the toll-gate? A. There is no gate, sir.

Q. I mean where they collect the toll? A. I don't know anything about that.

Q. Do you know whether they collect toll or not? A. I do not, sir.

Q. You only know what you saw; that you saw the sign? A. I don't know. I have seen it stated that Washburn did collect toll; read the newspaper correspondence.

Q. What we want is legal evidence. Do you know that any toll has been collected of your own knowledge? A. Of course I do not, sir.

Q. Then you don't know anything about it? A. No. The gentleman told me not to limit my answers to what I actually knew. I started to do that, but he told me not to.

MR. TULLY: I understand that in this investigation we are not bound to confine ourselves to legal rules. We are sitting here, as it were, as a grand jury.

MR. DIBBLE: A grand jury cannot take anything but legal evidence; and hearsay evidence is simply no evidence at all. It has no more weight than a breath of air.

MR. TULLY: Where was the notice, "One Dollar Toll?" A. It was on a board just as you go below Inspiration Point, or somewhere near there.

Q. That was within the grant? A. Yes, sir.

Q. Do you know who caused it to be erected there? A. I do not, sir.

Q. Now, Mr. Grant, have you ever heard from any reliable source, from persons whom you believe, as you would ordinarily believe a person, whom you would suppose to be truthful and honest men, state that they have paid toll? A. I read a statement in the newspaper about a man from Milwaukee complaining.

Q. In regard to any individual; whether the individual paid toll? A. He was the individual. He said so, and published it all over the world.

MR. DIBBLE: Did he tell you so? A. He did not; I never saw the man.

Q. All you know is that you saw it in the newspaper? A. Yes, sir.

Q. What you see in the newspaper is not always so? A. I am fully aware of that.

MR. TULLY: State whether you have conversed with any person—any reliable person—who has informed you that the person with whom you conversed had paid toll on that road? A. No, sir; I never did.

Q. The ninth charge is: "Neglect to prosecute persons for disfiguring and destroying natural features of the valley, in open defiance of law."

A. I know nothing of that charge, sir.

Q. Nothing at all? A. Nothing at all.

Q. The tenth charge is: "Holding annual meeting with closed doors, in defiance of law." A. I know nothing of any such thing.

Q. The eleventh charge is: "Allowing contractors for the Stoneman House to cut and mill timber within the limits of the grant." A. I know nothing of what they have allowed the contractors to do.

Q. The twelfth charge is: "Open defiance of laws prohibiting the granting of exclusive privileges." A. I have already stated what I have heard Mr. Mills say about that.

MR. MILLS: Mr. Chairman, I would like to inquire, as a representative of the Yosemite Commission here, the extent to which we, as Commissioners, might be allowed to protest against testimony of this character; whether we have a right to protest against testimony which is hearsay. For example: I am here to testify to anything I may know concerning this matter, and it certainly cannot be a dignified proceeding that Judge Grant should testify to what I know, or what I say. I am present by virtue of your subpoena to testify here before you.

THE CHAIRMAN: I think the answers should be confined to what the witnesses know.

THE WITNESS: I am lawyer enough to know that anything that any of those Commissioners say, anywhere in my presence, when I hear it, is evidence.

MR. MILLS: Permit me, also, Mr. Chairman, to state that it is not denied, and will not be denied—therefore the committee need not take testimony on that subject—that exclusive privileges have been granted. Therefore there is no use to try and prove that. The defense in this case will admit it. You can do as you choose, but you may save yourselves the trouble of taking testimony on the subject, because it will be admitted.

MR. TULLY: When a witness is on the stand, I submit we should proceed to examine him with regard to any facts within his knowledge.

MR. MILLS: We, as the accused, submit that we have rights, and that we certainly have the same right that anybody, or the attorney for anybody, in a Court of justice would have, to object to the character of the testimony; if it is irrelevant and incompetent, and is not keeping to the question of

charges. I submit respectfully to you the question—the extent of our right in this matter. What right have we? Have we a right to protest against this character of testimony? That is a respectful question submitted to you. We are here under charges sworn to by a respectable citizen of this State. Now, have we a right, as accused before you, to object to the character of the testimony, just as an accused in a Court of justice would have? Do you intend to accord us that right, or deny it?

THE CHAIRMAN: I have already stated that the witnesses should confine their answers to such things as they know to be facts; that they know of their own knowledge and belief. So far as the protest is concerned, there is no objection to entering the protest.

MR. MILLS: I understand that we shall have the right to object to the testimony when it is irrelevant or incompetent.

MR. DIBBLE: The Commissioners will have the right to cross-examine the witnesses.

MR. MILLS: We shall claim that right.

MR. TULLY: I don't think that there is any objection to that, providing that other people have the same privilege.

MR. DIBBLE: No; the proviso does not follow. The members of this committee alone can question the witness, except the accused, if there be an accused person, should have the right to cross-examine the witness; but an outside person could not cross-examine the witness. A person not accused, and not a member of the committee, could not have a right to question the witnesses. Any question that anybody wants asked he can submit to any member of this committee and it will be asked, but we could not accord to outside persons the right to ask questions, unless those persons are accused.

MR. TULLY: I submit that any person who could throw any light on this investigation has a right to submit any question to the committee, in order that the question may be asked.

MR. DIBBLE: Of course, and we would ask it. It is only a question of the propriety of proceeding.

MR. TULLY: I understand, under the Chairman's ruling, that persons here who are in the interest of I may say the defendants in this investigation, would be entitled to a reasonable cross-examination.

Q. The thirteenth charge is: "Reduction of rentals, to the prejudice of the State's income." Do you anything about that? A. Yes, sir.

Q. You will please state to the committee just what you know. Confine yourself, as far as you can, to what you know of your own knowledge, but I apprehend that if you have any reasonable ground, predicated upon reliable information, that you may state to this committee the nature of such information as you have from that source? A. When the Stoneman House was about completed some members of the Commission passed my house, and among them the Secretary, Dr. Griffith. He was talking about the renting of the house, and invited me to bid for the hotel—the Stoneman House. Well, I was keeping a hotel because I owned it. My tenant was keeping it; I let it to him. I said I thought I had plenty of hotels. I had one in Mariposa County and two in Davenport, and that the furnishing of that hotel would cost from twelve to fifteen thousand dollars. He observed, "That is the very reason we want you to bid for it, because we know you can furnish it properly." I replied to him that I would furnish him a bidder who would furnish that hotel and keep it in first-rate condition as a responsible person kept a first-rate hotel. I stated that I was anxious, in the place where I lived, to have a first-rate hotel in the Yosemite Valley, because it would increase the travel by my house. When the Com-

missioners advertised for bids for the hotel—before they made this advertisement—Mr. Baxter, a barkeeper of Mr. Cook, was passing my house, and in the course of conversation he observed that if any other person—I had heard the same rumor talked about by people coming from the Yosemite—leased that hotel, except Cook, that the stage company would not take passengers there. When that advertisement was given I put in a bid for, I am quite sure, \$1,650 a year; it might have been \$1,600, but I think \$1,650—it is in writing among the papers of the Commissioners—for the hotel, for the period of ten years, the time that they intended to lease it. Mr. Henry Tyack, at the same time, put in a bid for \$1,800 a year—\$1,500 for the two first, and \$1,800 for the next six, and \$2,100 for the next two. In consequence of what I had heard about the stage management, and in consequence of my being told that they boycotted Mr. Leidig, I put on my bid a condition that “this bid is upon the condition that the Commissioners will require all stages that carry passengers to Yosemite to take them to and from this house when they want to go there.” Mr. Tyack’s bid contained the same condition. I read in the newspapers that a gentleman in San Francisco bid \$1,500 a year. Cook bid \$1,200. I also read in the San Francisco papers, and I was afterwards informed by Tyack, that all these bids were rejected, and the Commissioners determined next day to rent the hotel for \$1,200, and to receive bids for the privileges; and the person who bid the highest for the bar and billiard saloon was to have the hotel at \$1,200. Of course I knew nothing of that letting, and I could not bid for it. Mr. Tyack told me that he bid \$300 for those privileges. The other person in San Francisco said he bid \$200 or \$250.

Q. \$200 or \$250 a year? A. Yes, sir; these bids were by the year. Mr. Cook told me his bid was less than Tyack’s, which was \$300. Mr. Tyack also told me that he was called into the Commissioners’ room after he had put in this second bid and asked to withdraw it, which he declined; that Mr. Cook was called in there, and the property was let to him for \$1,200 for the hotel and \$350 for this privilege. Mr. Tyack conveyed to my mind the idea that Cook’s bid had been allowed to be increased by the Commissioners after it was filed. I know nothing about that. Of course, the papers which belong to the Commissioners will show. I know that my bid was rejected and that the property was let for ten years for a less sum than I bid.

MR. DIBBLE: What was your bid? A. \$1,650.

Q. They let it for how much? A. \$1,200. They let the hotel proper for \$1,200 and the privileges for \$350. The reason assigned in the newspapers was, by Senator Goucher, a member of the Commission, that the reason they rented the hotel at \$1,200 was that the State got the rent of the hotel, and the rent of the privileges went to the Commissioners. I wrote a communication to the Governor of the State complaining—I suppose I used the words “gross fraud,” that had been practiced on me in leasing that hotel—and asking him to remove every Commissioner that was concerned in it. I don’t know who they were, but I know some of them were not there and didn’t vote, and I know some of them voted to give the hotel to Cook. I received an answer from the Secretary, stating that the matter would be attended to, but it never was.

Q. The fourteenth charge is: “Making illegal and arbitrary contracts with laborers, and withholding their wages.” A. I know nothing whatever of that charge.

Q. The fifteenth charge is: “Refusal to recognize their own contracts and to pay balance due on the same.” A. I know nothing of that charge.

Q. The sixteenth charge is: "Suppressing and withholding from citizens facts concerning the acceptance of the Stoneman House by the Board, and illegally leasing the hotel." A. I have told you what I know about the leasing of the hotel. I have never thought it was illegal for them to lease it for any price they pleased over \$1,200.

Q. The seventeenth charge is: "Cutting wood on the grant and selling it to residents of the valley, thereby destroying the natural park timber, in defiance of their own rules and regulations and in violation of law." A. I know nothing of it.

Q. The eighteenth charge is: "Official sanction and approval of a return to the vicious toll system of former years, abolished with great difficulty and at considerable expense by the Legislature." A. If that alludes to the granting of special privileges, I could only repeat what I said about what I heard Mr. Mills say last night. He said here to-night to the committee that there need not be any proof on it.

Q. You have already testified to what you know about the hotels and special privileges? A. Yes, sir.

MR. DIBBLE: He knows nothing, except what has been admitted by the Commissioners.

MR. TULLY: The nineteenth charge is: "Eviction of law-abiding and useful families, in aid of monopoly enterprises, thereby destroying the district school of Yosemite." A. I know nothing of that.

Q. The twentieth charge is: "Gross neglect of public roads and trails within the grant." A. I know nothing about it.

Q. The twenty-first charge is: "Employment of State labor upon work for private parties." A. I know nothing about it.

Q. The twenty-second charge is: "General failure and incompetence of the Board to properly manage the Yosemite Valley for the interest of the State of California, in accordance with the conditions imposed by the United States, for the comfort and convenience of visitors from abroad, or for the welfare of residents of the valley." A. That will involve an opinion instead of a knowledge of facts, which the committee already have from me. From the standpoint upon which I view such matters, I think the Yosemite Valley has not been properly managed.

Q. Some additional questions have been submitted to me. State the transaction in regard to your attempt to lease the new hotel? A. I have already stated that.

MR. DIBBLE: Is there anything else, Judge Grant, that you know, that bears upon this investigation, that you think you ought to tell? A. No, sir.

Q. You have told all that you know? A. I have told all that I know.

MR. DIBBLE: I move that the Commissioners be allowed to ask any questions that they choose. He says he don't know anything else.

MR. TULLY: Did you ever write to the Governor on the subject? A. I have answered that question. I did write to the Governor on the subject of the hotel.

MR. DIBBLE: Did you have any correspondence with the Governor of the State? A. I wrote a letter to the Governor of the State, and had an answer from his Secretary. He said it would be attended to. I told him I would attend as a witness wherever and whenever I was wanted. I have never heard from him since. My reply was: "I will attend at any time and place."

Q. You wrote to the Governor, and got an answer from him? A. From his Secretary.

MR. TULLY: Did you ever have any conversation with Dr. May on the

road going east, in regard to the hotel matter, and what was it? What did May answer? A. I had forgotten it. I did have a conversation with him, and he agreed with me that I was treated improperly.

Q. You have no recollection now—your recollection is not sufficiently clear to state what that conversation was? A. I could not state it in precise words. I know that we were talking about the letting of the hotel, and he agreed with me that I was treated improperly in not having the lease of the hotel—letting it to a person for a lower bid than I made. He seemed to know who I was; to be acquainted with my history and character, and to know that I was perfectly capable of performing anything that I undertook.

Q. Your recollection of the conversation is that he acknowledged that you had been treated badly? A. Yes, sir.

MR. ROBINSON: Mr. Chairman, can I ask a question?

THE CHAIRMAN: State the question.

MR. ROBINSON: I would like to ask the counsel if I, as complaining witness, cannot ask questions myself, from my paper?

MR. DIBBLE: That is not permitted in any Court in the world. The object in having these additional members appointed on the committee was to meet that difficulty. Any question you want to ask will be asked, but it is not proper that outside persons should ask questions.

MR. TULLY: Do you ever hear complaints from tourists returning from the Yosemite or Big Trees, while at your hotel, or any subject connected with either place? Do you hear complaints often? A. Oh, yes, I frequently hear them.

Q. What is the nature of those complaints? A. Now that is a personal matter between me and my brother hotel keepers. People come to my house and praise my hotel and dispraise the others.

Q. It is a personal matter between you and the patrons of your hotels? I understand they are the parties we have reference to: persons passing back and forth? A. Yes, sir; persons passing back and forth to Yosemite.

Q. Tourists or visitors? A. Visitors. These complaints are such that I sent my adopted daughter to these hotels to see if they had any foundation, and I am very glad to say, and I take a great deal of pleasure in stating, that she said those hotels were very well kept under the circumstances; both the Stoneman House and the Wawona House; that the food was generally well cooked; it was abundant in quantity; it was generally neatly put upon the table, and that the only defect that she observed was, that in places where there was a crowd the service was not prompt enough. Of course I sent her there for the purpose of ascertaining, in order that, if there was any neglect on the part of these gentlemen, I might talk with them about it, for I was interested in their keeping good hotels; and we talked that matter over as friends. I know that Cook sent a message to me—the visitors at my house were always furnished with fresh fruits, strawberries, raspberries, peaches; everything that was fresh was gathered from my farm. He sent a begging message to me: "Send me strawberries at any price." I didn't have them to send him, but I immediately planted enough to supply him another year.

Q. Here is another question: Do you think anything of the nature of a ring or monopoly exists in the Yosemite? Do you think the valley is better served for it? Do you see anything in the rulings of the Board that you think in conflict with national or State law in Yosemite matters?

MR. DIBBLE: That question is entirely improper: all those questions are improper. What we want are facts; we don't want opinions. If this gentleman knows of any facts, let him state them.

MR. TULLY: I will ask the question in the proper way. Do you know of any additional fact, which you have not stated, which bears upon the question upon investigation, as to the propriety of the management of this Yosemite Valley by the Commissioners? If you know of such fact, state it? A. Of my personal knowledge, I do not.

MR. TULLY: That is all we can get from him; we don't want his opinion; he is not here to give opinions.

Cross-examination.

MR. MILLS: When your bid was sent in for the hotel, didn't you send in, at the same time, a bid in the name of another party? Answer—No.

Q. Didn't you write two bids? A. I wrote them—I wrote a bid for a gentleman and he copied it.

Q. Didn't you guarantee his bid? A. I did; and I told the Commissioners I would prefer they would give the house to him rather than to me. His bid was higher than mine.

Q. You wrote two bids; one for a friend and one for yourself? A. Yes, sir.

Q. You wrote your friend's bid higher than your own? A. Yes, sir; I wrote it at his instigation; he told me to bid.

Q. You wrote both bids? A. Yes, sir; and he copied the bids that I wrote for him.

Q. You wrote a letter to the Commissioners, telling them that you would prefer they would not consider your bid as good as the other bid? A. I told them I would prefer they would let him have the hotel instead of myself.

Q. Then, when the Stoneman House was let, was there anything attached to the requirements? Was Mr. Cook put under additional obligations concerning work to be done in the completion of waterworks, in the care of the grounds immediately around the hotel, and in the care of the hotel—additional to the conditions that were attached to the other bidders? A. I don't know that he was, sir; I know nothing about what conditions were annexed to him; I never saw your lease.

Q. Do you know of your own knowledge how much Cook pays for the rent of the hotel? A. No; I don't know of my own knowledge.

Q. You don't know what the hotel was let for, do you? A. Of my own personal knowledge I do not.

Q. Of course that is the only evidence that amounts to anything; not what you heard? A. I differ with you about that.

MR. TULLY: An opinion, founded upon reliable information, is proper matter before this committee.

MR. MILLS: The best evidence will be the facts, and the witnesses are available to this committee.

THE WITNESS: If we were in a Court of law that is all right, but we are not.

MR. MILLS: We want the freest and fullest investigation.

MR. TULLY: We don't want the gentleman's individual opinion.

THE WITNESS: I am an older lawyer than my friend, and I think I understand the law of the legislative matters better than he does.

MR. MILLS: I wish to ask this gentleman if he knows the conditions under which the hotel was let. His testimony has been taken here in impeachment of the Commission and the manner of letting the hotel. Now I ask the witness, who is brought here, what he knows concerning the letting of the hotel. What is his answer? A. I never saw the lease.

I don't know what its conditions are. I know what the proposals were, and I bid in accordance with those proposals, and I didn't get the hotel, and my bid was higher than the man's who got it.

Q. Do you know that it was higher, taking all the conditions and requirements attached to the lease? Do you know that it was a higher bid, all things considered, than your bid? A. Yes, sir; I know from the newspapers that it was \$1,200, and my bid exceeded that.

Q. Do you know that it was \$1,200? A. Of my own personal knowledge, to see it and look at it, I do not; but you bring it here and let me look at it.

MR. MILLS: That is what we will do. We will present all that kind of thing here in documentary form. It is all published. A. As a lawyer, I know that publications that are made in the newspapers, right in the presence and hearing of these Commissioners, is proper evidence for me to testify to before this committee, in my opinion.

MR. MILLS: If things published in the newspapers in the presence of accused persons are conclusive evidence of guilt, the most of them would be in the penitentiary.

MR. TULLY: I don't understand this gentleman to say that it would be conclusive evidence, but it is sufficient data upon which to form an intelligent opinion, and we are entitled to that.

THE WITNESS: I stated last night, when he made this objection, that the record was available to the Commissioners, and that was the highest evidence.

MR. MILLS: Didn't you attach a condition to your bid which was not in the advertisements? A. I attached the condition which I have already stated, and for the reason that I have stated.

Q. That is, requiring the stages all to drive up. A. Yes, sir; about the stages boycotting the hotel.

Q. How long was this hotel to be let for? A. Ten years.

Q. You attached a condition that the stages should be absolutely obliged to deliver at the new hotel the passengers carried into the valley for ten years, if you took it, and that was the only condition upon which you would take it? A. Yes, sir.

MR. TULLY: Of what practical use, or what profit would there be in leasing that hotel for the term of ten years, if you could not count with some certainty upon the patronage that would be brought to your place through the agency of the stages? A. If the Commissioners were to allow stages to have a monopoly of the right to keep passengers away from the hotel that they rented, it would be utterly valueless either to the public or the tenant.

MR. HOOK: Do the stages now all deliver passengers at the Stoneman House? A. I understand so, sir. It is the common statement of passengers by my house. You can ascertain by asking the Commissioner that question, and I reckon he will answer it correctly. I don't think he is a man who is going to deny the responsibility of what he does. Let me state now: this gentleman undertook to make a technical evasion of that condition. He said they were contemplating having the stages all go to their office, and let the hotel—

MR. MILLS [Interrupting]: I object to this witness arguing this question before this committee. This cannot be proper. We have a right to a perfectly fair hearing here, and this witness has no right to argue our side or take up our objection, and under oath make an argument. I was going to ask you, Mr. Grant, do we understand you, sir, that in the condition that you attached to your bid with reference to the passengers to be brought to

that hotel, that you were to have exclusive control of them? A. No, sir; there was nothing of that kind in that condition; only that this hotel was to be put upon an equality with the others.

MR. TULLY: He answered that question, that he knows nothing more that bears upon this question.

JOHN T. MCLEAN.

Being duly sworn by the Chairman, testified as follows:

MR. TULLY: Do you desire that we shall read the clause here that precedes the charges, or will you be satisfied to answer the specific charges? Answer—Perhaps you had better read the whole of it, that I may understand it.

[The clerk read the sworn charges preferred by Mr. Robinson.]

MR. TULLY: The first is: "Squandering and misapplying appropriations and public moneys." A. I don't know anything about anything of that sort.

Q. Second: "Forcible breaking and entering of private property." A. Nothing.

Q. Third: "Wanton destruction of public and private property." A. I don't know anything about it.

Q. Fourth: "Cutting and destroying timber in the valley." A. I know of some trees being cut out—cut down and got out of the way—in order that good views might be got of very important features of the valley; but I would not consider that as being hurtful at all. I know that from the Coulterville Road, which I built into the valley—the first road that went into the valley—the view of the Bridal Veil Fall was very much obstructed by trees; and, at my suggestion—and I am sure I wanted to preserve all the best features of the valley—the Commissioners had some trees cut out, so that, as people rode in on horseback, or rode in in carriages or in stages, they could get a very fine view of Bridal Veil Fall, which was on the other side of the valley, across the river. I thought that was the proper thing to have done, without any disposition to vandalism or anything of that sort.

Q. The fifth charge is: "Burning shrubbery, clearing and plowing up meadows, and allowing persons to do the same for their private gain, thereby doing irreparable damage to the natural beauties of the valley?" A. Well, I know something about some matters that might be germane to that question.

Q. Please state them? A. I have known the valley since 1867. I went to the valley in 1867, and have been there a great many times since; and when I went first to the valley of course there was much less of the floor of the valley fenced in than there is now. There was too much then, in my judgment, and of course there is too much now. Mr. Hutchings, who was then keeping the principal hotel in the valley, had a considerable amount of the valley fenced in, and I think to the prejudice of the rights of the public under the Act of Congress making the grant and the Act of the Legislature accepting the grant from the nation as a trust. This State accepted that grant as a trust, and one of the conditions of that trust was that the grant should be held for public use, and for resort and recreation—public use, resort, and recreation. Those are the three terms that are used in the Act of Congress indicating that condition; that the grant was to be inalienable, and to be held for public use, resort, and recreation. Well, now, you can't use a property, the public can't use it, if it is fenced

in from the public; and the legitimate fencing, in my judgment, would be so much of the grant as was necessary, and only so much as was necessary for the proper enjoyment of a visit to that valley by the public; and they would have to have comfortable quarters in hotels, and the hotels would have to have land enough adjacent to them in order to properly carry on their hotel business and to accommodate the public. They would have to keep some cows, and have a garden, and they might have to have an orchard; whatever was necessary, perhaps. This would be my judgment in regard to it, gentlemen; whatever was necessary of the good land of that valley to enable the hotels to accommodate the public, that much ought to be allowed to be fenced in, and the balance of it ought to be open to the public, and ought to be cared for by the Commission.

Q. Those are the conclusions with regard to what you knew in connection with the law? A. This question is: "Do I know anything about the fencing in the valley, and its being let to private persons to the disadvantage of the public?" Well, I know that at that time there was a portion of the valley fenced in, but then Mr. Hutchings was contesting the right—his individual right—as a settler against the Commissioners who represented the Nation and State. The question was in the Courts, and so it might be proper for Mr. Hutchings, until such time as the Courts decided the matter, to maintain his individual right, and the Commissioners did not tear down his fences or otherwise interfere with him that I am aware of, but they went to the Courts, and the question was decided by the Supreme Court of this State, and the Supreme Court of the United States, that that land was inalienable, and that it was to be held for public use, resort, and recreation. Now, then, whatever land Mr. Hutchings held after that that was not necessary for him to entertain his guests properly in his hotel, or whatever land is held now, shut up and kept from the public that is not necessary for the hotels for the accommodation of the public who must go to a hotel—who do not go there to camp and live by themselves—why, that much, it seems to me, is in contravention of this provision, this condition upon which the grant was made by Congress and accepted by the State. There is considerable of that territory fenced in now, as I think, in contravention of the public right.

Q. What proportion of that which is fenced in—how does that compare with regard to the part that you think they would be justifiable in fencing in? A. Well, there are two hotels in the valley now, Mr. Tully; there are two hotels in the valley. Well, if twenty-five acres, at the outside, was given to each hotel, I should think that would be enough. That would be fifty acres of land.

Q. Fifty acres? A. Yes, sir.

Q. That would leave about how much that is fenced in? A. Of arable land?

Q. Yes? A. Well, now I am not well posted enough to know exactly what amount.

Q. About what proportion does it bear? Is it twice the amount, or half the amount? A. I should think that there must be several hundred acres of land inclosed in the valley.

Q. In excess of what they should have? A. No, the total inclosure.

Q. How much in excess of what you have stated you think they are entitled to fence? How much in excess of what you think they ought to be entitled to? A. Inasmuch as I don't know how much there is fenced in—

Q. Well, give an approximate estimate? A. I should think one quarter of the amount that is fenced in would be sufficient, in my judgment; but

I want you to understand this is only my own judgment. The Commissioners have their judgment in regard to this matter, and it is a difference of judgment as to the proper administration of that grant under that condition upon which we have accepted the grant, and put these gentlemen there to manage it.

Q. Well, do you consider that the fencing of that portion which is inclosed mars and interferes with the free access to all of the beauties of that valley, which tourists or persons going into the valley, visitors or tourists have, under the understanding that that belongs to the public at large? Is it in contravention of what you believe would be proper management, and not giving him that access which he ought to have to it under the rules governing it? A. Well, sir, any citizen of this State, or of the United States, or any other civilized country, or uncivilized country, has a right to go to the Yosemite Valley, and he has a right to see the wonderful scenery of that valley under any and all possible circumstances that he may want to see it, and in my judgment he cannot go amiss anywhere within the limits of that valley of seeing the most wonderful and stupendous scenery, rock and water scenery, that there is in the world.

Q. Any barriers that may be erected in that valley that prevents his ingress and egress to all the beauties of the natural surroundings there? You think, outside of those exceptions that you have made, that it is in derogation and in violation of the object for which the grant was donated to the people of this State? A. That is my personal opinion in regard to that matter.

Q. You so regard it? A. Yes, sir, I do; as an unwise act on the part of the Commissioners, in proscribing the right of any citizen of this country, or any other country—because that is for the use of the world.

Q. Do those barriers actually prevent tourists from having free access to all that a tourist would desire to see in that valley? A. I think they do; yes, sir; they do not have access to all that they ought be able to see.

Q. What they would naturally desire to see? They go there to see all of them? A. Yes, sir. Nobody ought to go to Yosemite with the idea of getting away in less than ten days, in my judgment, and if they do they have not a proper appreciation of that scenery, because it is a kind of scenery that grows on a person; and the longer you stay there the more you are in wonder at the grandeur and stupendous character of it.

Q. The sixth charge is: "Fencing and farming out public lands for the benefit of private individuals." A. Well, this very land that is fenced, the Commissioners get a revenue from, I dare say, properly. I have no thought that the Commissioners are in any way immoral in their administration.

Q. Just as to the fact, they do rent it out? A. They do rent it.

Q. For money? A. Yes, sir.

Q. For a price? A. Yes, sir.

MR. HOOK: Ask the witness if he knows of any improper appropriation of the funds.

MR. TULLY: I was going to ask the question, if he did know, of his own knowledge, of any instance?

MR. MILLS: On behalf of the Commission, I want to ask if Mr. McLean's opinion was not taken as to the propriety of the fences; if it was not a matter of opinion that he gave?

MR. DIBBLE: Mr. Mills can ask the question at the proper time.

MR. MILLS: I would like to have it settled, Judge Dibble, so that we will not have any friction between ourselves here. I don't feel like standing here in an attitude of antagonism towards this investigation, and I would like to have it settled whether or not we, standing accused before you—

because you have specific charges—whether we have a right to direct the testimony into such channels as we regard as competent testimony. If that is settled once, let us settle it and go on.

MR. DIBBLE: I think the Commissioners being accused, should have the opportunity to object to any improper questions, but as to directing the course of the inquiry—

MR. MILLS: That would not be directing it.

MR. TULLY: They can do that by cross-examination. When the examination is completed, the Commissioners may ask any questions by way of cross-examination, and bring the matter back to its proper position. I want to ask the witness if he knows of any misappropriation of the revenues received by those Commissioners of the Yosemite Valley? A. No, sir; I do not. I have been speaking previously in regard to this fencing business, as in my judgment, in violation of the condition upon which the grant was made to this State, and put into the hands of the Commissioners as the managers, to manage the property. This is simply a difference of judgment between me and the Commissioners, that is all. I don't charge them with any malfeasance or anything of that kind, I wish to be perfectly understood in regard to that matter.

Q. The seventh charge is: "Refusing to investigate or consider charges of gross neglect and incompetence and destruction of property preferred against Guardian Dennison." A. I don't know anything about it.

Q. The eighth charge is: "Connivance with persons endeavoring to secure all business privileges in Yosemite Valley, and to evict other residents and debar the general public from just and legal use of the valley?" A. I don't know anything about it.

Q. The ninth charge is: "Neglect to prosecute persons for disfiguring and destroying natural features of the valley, in open defiance of law?" A. I can't say anything about that. I am speaking now of my own personal knowledge. I hear stories, but that is not evidence here, I should judge.

Q. The tenth charge is: "Holding annual meeting with closed doors, in defiance of law?" A. I don't know anything about it.

Q. The eleventh charge is: "Allowing contractors for the Stoneman House to cut and mill timber within the limits of the grant?" A. I think I know that that was not done. The mill which the contractors constructed, who reside here in this city, was located up to Jentry's, outside of the line of the Yosemite Grant, and the contractors bought, so one of them told me himself—that is how I happen to know it, if that is proper testimony—the principal contractor; I met him here to-day; he resides here; a responsible man—told me that they had bought either a section or a part of a section of good timber land outside of the grant, and that their mill was located there, and that there they cut their timber and lumber with which they constructed the new hotel.

Q. The twelfth charge is: "Open defiance of laws prohibiting the granting of exclusive privileges." A. I believe there is a law of the State now that no exclusive privileges shall be granted; and, as Judge Grant said, I have heard Mr. Mills acknowledge that the Commissioners do grant exclusive privileges, and Mr. Mills here this evening said that they acknowledged that fact.

MR. MILLS: We acknowledge that single privileges are given.

MR. TULLY: The thirteenth charge is: "Reduction of rentals, to the prejudice of the State's income." A. I don't know anything about that.

Q. The fourteenth charge is: "Making illegal and arbitrary contracts

with laborers and withholding their wages." A. I don't know anything about it.

Q. The fifteenth charge is: "Refusal to recognize their own contracts and to pay balance due on the same." A. I don't know anything about it.

Q. The sixteenth charge is: "Suppressing and withholding from citizens facts concerning the acceptance of the Stoneman House by the Board, and illegally leasing the hotel." A. I don't know anything about it.

Q. The seventeenth charge is: "Cutting wood on the grant and selling it to residents of the valley, thereby destroying the natural park timber, in defiance of their own rules and regulations and in violation of law." A. I don't know anything about it.

Q. The eighteenth charge is: "Official sanction and approval of a return to the vicious toll system of former years, abolished with great difficulty and at considerable expense by the Legislature?" A. I think that is a misapprehension entirely. I am tolerably conversant with the toll business in the valley, and if that refers to what Judge Grant was speaking about—I built the first toll road into the valley—I opened the Yosemite Valley to public travel by building the first road that went in there, and so I am familiar with this matter about tolls; and I had the exclusive privilege from the Commissioners for ten years to collect toll on the road. I built within the grant, on the north side of the Merced River, and two or three years afterwards Washburn and his associates had a like privilege from the Commissioners, and built a road into the valley on the south side of the Merced, with a like privilege of collecting toll; but a condition was made that these tolls should be collected on the outside of the grant. Now, at the expiration of the ten years lease which the Coulterville Road Company, that I represented and was a large owner in, when that expired, when that ten years expired, the Commissioners renewed that lease; and shortly after the renewal of the lease the State, by legislative enactment, authorized the Commissioners to buy so much of the road that I built as lay within the limit of the Yosemite Grant. They bought it, and thereafter there were no tolls; I collected no tolls. But the Commissioners renewed Washburn's lease after his ten years expired, and Mr. Washburn, under that contract, has the right to collect tolls, but he must collect them outside of the grant, the same as I did. Both leases were of the same purport.

MR. DIBBLE: These tolls were not collected on the grant? A. These tolls, as I understand it, he is not allowed—that is my supposition; I know that was the condition of my lease, of the Counterville Road Company lease, and I was told by the Commissioners that they made the same condition with Washburn.

MR. MILLS: The leases will be in testimony.

MR. HOOK: If they collected on the outside of the grant, the Commissioners have nothing to do with them? A. The Commissioners allowed them to do it, and they built a road with their own money into that reservation. Otherwise passengers could have only got in there on horseback; and it was with a view to the best possible use of the valley; and the Commissioners could not get any money from the State to build this road, for the State to build it. The State has always been mean in regard to Yosemite Valley, in my judgment; never has properly appreciated the great value of that wonderful property which it owns there; has been niggardly and mean in its public actions towards the Yosemite Valley. Immediately that that grant was made to it it ought to have appropriated to it the necessary money to open roads from the public roads that then existed towards the grant, into the grant itself, and made it accessible without any tolls at

all. That is what the State ought to have done, and would have done, if it had understood the nature of the property that Congress gave it.

MR. TULLY: Dr. McLean, you stated the Commissioners made these contracts on those roads by which these men were enabled to come into the grant, but the toll roads were put on the outside? A. The toll-gates.

Q. Toll was not collected on the grant, but was collected on the outside? A. Yes, sir; I put a toll-gate on the outside, and the Indians killed the toll-gatherer, and burned up my toll-house. This was in the cañon of the Merced River, in a lonesome place, and as good a man as ever breathed the breath of life had his life taken away from him by the Indians there, because the Commissioners compelled me to put the toll-gate outside of the grant, in order to collect toll; and then I asked the Commissioners after that for the privilege of collecting the toll within the grant, and I said, "There is no reason why you should not give it to me; I don't want to imperil any one's life." I would not stay there myself. I came very near being killed in that cañon myself, when I was building the road, by a Jayhawker.

Q. What I want to get at, doctor, is this—? A. One word more. I asked the Commissioners whether they would not, in view of the impossibility of my collecting toll outside of the grant, and near to the line of the grant in that cañon, whether they would not give me the privilege of collecting toll within the grant, and for the people that had built that road with my money; and they would not do it, because they said this public use and conduct of the grant prevented them from doing it—but they didn't keep that rule that time. These were the old Commissioners; it was not the present Board. The old Commissioners allowed a man to build a road right on the level of the valley. He collected toll on it, and they allowed these trails to be built, and toll collected on the trail within the grant, at the same time, and they would not allow me, without imperiling the lives of the toll collectors, to collect toll except on the outside of the grant, and it was a very great injustice I think to the Coulterville Road Company. But, then, that is not these Commissioners. It was their predecessors, previous to 1880.

Q. I want to ask you whether that privilege to collect tolls on the outside, whether it was a contract—that the Commissioners made the contract with these parties, and whether they received anything in consideration of giving that privilege, not to collect tolls, because that is whipping the devil around the stump—but to come into the valley? A. The consideration that we had was that we were to make that public improvement for the benefit of the Yosemite Valley, and build a road into the valley. That was the only consideration. The Commissioners and the public wanted roads into the Yosemite Valley, and I was fool enough to build one.

MR. HOOK: Did the State give you a franchise to build the road? A. The Governor and the Commissioners, who were managers of the Yosemite Valley, gave me the franchise to continue a road, which myself and other incorporators owned and had built from the Bower Cave in Mariposa County, towards the Yosemite Valley. We undertook for this privilege of building the road from the boundary of the grant to the level of the valley, to continue that road up to the boundary of the grant, and then to cross the grant, and to get into the level of the valley, so that a four-horse stage coach could go in with ease and comfort.

Q. It was the understanding, when you started in to build that road, that you should collect toll to repay you for the money expended? A. Certainly; that road cost \$70,000, the whole of it. I certainly would not build a road for fun, and put that money in it.

MR. DIBBLE: Did you get your money back? A. Never.

Q. Did the Commissioners have any object in not allowing you to collect toll? A. Judge Dibble asked me a question, whether I got my money back. The State, through its Legislature, violated a contract which I had. The Legislature violated a contract which I had with the Governor and the Commissioners, and threw me out.

MR. DIBBLE: That was before I was elected? A. That was before you were elected. It was a granger Legislature.

MR. TULLY: You said that there was a ten-years' lease of the privilege of coming in over the road that you built? A. Yes, sir; and over the roads that Washburn built.

Q. Then the other parties had a lease to come in over the roads that they built? A. Washburn had a similar lease on the south side, and that was understood when I got my lease. I understood that the Commissioners were going to be ready at any time that there were applicants wanting to build a road on the south side—that that right would be let by them. I had my eyes open in regard to that matter, but I did not in regard to the Legislature allowing another road to come in on the same side of the valley that I was on; or else I would have seen them all in Tophet before I would have put a dollar in it.

Q. The nineteenth charge is: "Eviction of law-abiding and useful families in aid of monopoly enterprises, thereby destroying the district school of Yosemite?" A. I can't say anything about that.

Q. The twentieth charge is: "Gross neglect of public roads and trails within the grant?" A. Well, I go to the valley every year once or twice. I have got a nice horse and conveyance, and I drive up there. I get on a steamboat at San Francisco and go to Stockton, and then I take a nice drive from Stockton into the Yosemite Valley and back again, as a matter of recreation for me. I am a professional man, practicing my profession, and I want a rest once in awhile, and I take that method of resting, and I drive over splendid roads in the Yosemite Valley.

Q. Here is a direct question. We must get down to the question. A. I drive over those roads, and they are good enough, I should think.

MR. TULLY: You think they have not neglected the roads? A. I am not aware of it if they have.

Q. The question is, do you know? A. I personally drive over them every year, and have for a good many years, ever since they built any roads there.

Q. Did you find them good enough? A. Yes, sir; they are good enough for me, and I want good roads. There may be something that I am not aware of, sir.

Q. The twenty-first charge is: "Employment of State labor upon work for private parties." A. I know nothing about that.

Q. The twenty-second charge is: "General failure and incompetence of the Board to properly manage the Yosemite Valley for the interest of the State of California, in accordance with the condition imposed by the United States, for the comfort and convenience of visitors from abroad, or for the welfare of residents of the valley." A. I think that is a pretty hard charge.

MR. DIBBLE: What do you know about it; what do you know about these Commissioners neglecting their duty? A. I have stated about what I know.

MR. TULLY: What do you know, if anything, about their neglecting their duties in the management of the valley? A. Nothing in addition to what I have stated. Perhaps I was misunderstood in that remark. I take it back, anyhow. It seems to me a pretty severe charge to make against the Commissioners. I believe they have been trying, in the main, to do what

was right, and they don't get any pay for doing what they do, excepting that they get their expenses there, and if they err in judgment, as I think they have in regard to these other matters—

MR. TULLOCH [Interrupting]: You spoke of some trees having been cut away, originally and at first, by your suggestion. Were there many trees cut away? A. No, sir; not a great many. There may have been half a dozen or a dozen trees, in order to open a magnificent view to what many people consider the most beautiful fall in the valley, the Bridal Veil Fall, from the Coulterville road, so that people could see that fall under the very best possible conditions as they were riding on horseback into the valley, or in carriages, or going in stages.

Q. You spoke of them having been cut away at some one's suggestion. Whose suggestion was that? A. I think Mr. Raymond made the suggestion. He is now dead. He was a very efficient member of the Commission in times past.

Q. You don't think there were many of those cut away? A. Not more than was necessary, because I think Mr. Raymond's idea, and the ideas of the other Commissioners was, at that time, to preserve the valley, as far as possible, in its natural condition.

Q. You spoke of a large quantity of the valley having been placed under fence, did you not? A. Yes, sir.

Q. How large a part of the valley do you think is under fence? A. Well, I should think there were two hundred acres or more under fence.

Q. What is the nature and character of that fence; is it a barbed wire fence, or a wooden fence; or what sort of a fence is it? A. Well, a part of it is, it is post, and part board, and part barbed wire, I think—a large part of the fence that the Commissioners have built.

Q. The Commissioners built it or had it done? A. The Commissioners have latterly built a considerable amount of fences there; that is, they fenced the roads.

Q. They did fence certain roads, did they? A. I think they fenced roads on Hutchings' side, on the north side of the valley, over towards the talus, towards the debris that has fallen down.

Q. What is the nature of the land inclosed; would it be good and sufficient land to raise grass and hay upon? A. Yes, sir; it is the best land there is the valley, that is inclosed.

Q. Is there any of that land under tillage? A. Yes, sir.

Q. How much of that land is under tillage? A. Well, I should think somewhere from twenty to forty acres. I don't know positively, but somewhere from twenty to forty acres, up there at the old Harris place, which is now rented, I believe, to the wagon road company.

MR. MILLS: Coffman & Kenney? A. Coffman & Kenney; yes, sir.

MR. MILLS: There is more than that. There are ninety-eight acres; about ninety acres in hay, altogether, in the valley. A. Ninety acres, Mr. Mills says.

MR. TULLOCH: Does the fact of the land having been inclosed and its now being under tillage materially interfere with the convenience of parties going about from place to place and observing the grandeur of the scenery? A. That, in my judgment, is one of the most beautiful parts of the valley, right where this inclosure is made.

Q. And parties are inconvenienced thereby, are they, or are they not? A. You can't go in there, of course, unless your horse leaps the fence, or you climb over it yourself, at the risk of tearing your breeches.

Q. Neither can parties come into the valley and camp there, because of the fences and the land having been inclosed? A. No, sir; they cannot;

and therein a public right is kept from the people, who really own that grant, and who pay the taxes that maintain it.

Q. Prior to this land having been fenced in and having been cultivated, was that not a camping ground, largely, for parties who used to go there for the purpose of recreation and looking at the scenery? A. I think it was, sir. When I first went to the valley I spent ten days there with a good wife that I have, and I never spent more delightful days in my life than I did in 1867, when I was camping there; and we could camp anywhere, almost, in the valley, except some reservations that Hutchings had improperly fenced in.

Q. Is there any hay raised on that land? A. Now there is; yes, sir.

Q. How much hay is raised there? A. Well, any spear of hay is too much, in my judgment.

Q. Well, how many tons would you think was raised there? A. I couldn't say about that. I think all the hay and all the grain that is used in the valley, that is needed in the valley, ought to be brought in from the farms on the outside of the grant.

Q. Do you think any considerable quantity of hay is either cut upon the grant or raised upon the grant; is there much hay, do you think, raised there? A. Why, certainly there is. If there is ninety acres, there is a very considerable amount of hay.

MR. HOOK: How much will that grow to the acre? A. I don't know. It is not first class hay; it is not such hay as will grow in the meadows outside.

Q. What is the quality of the hay? A. It is rather a coarse hay.

Q. Wheat, barley, or timothy? A. I think barley hay, they raised, principally.

Q. Will that run a ton and a half or two tons to the acre? A. I should think not.

MR. TULLY: There are some questions here that have been submitted by parties. So much as I have read has been gone over.

Q. Have they the right, under the terms of the grant, to give you the exclusive right to build a road? A. The Commissioners of the Yosemite Valley, under the Act of Congress making the grant, were, by one of the conditions, invested with the power and authority to manage those premises. The State accepted that grant formally by legislative enactment, and as I have already stated, the Act of Congress gave them full power and authority to manage that property, and administer it, and to do all that was necessary in order to properly administer the grant. Now, with that authority of both Congress and the nation, they had the right to do, in their judgment, anything that was necessary in order to make that grant accessible to the public, so that it would be for the public use, in the largest sense of that term; and they could not get any road built to the Yosemite Valley by anybody, myself or anybody else, unless we had the exclusive privilege to a right on one side of the valley; and the Commissioners gave our company that exclusive right, as they had the authority to do.

Q. I think that is unnecessary. The question whether they had the right to do it or not is a question for subsequent consideration. It is a legal conclusion. Did they or did they not grant you an exclusive privilege? A. They did grant me an exclusive privilege.

Q. Did they grant any other person a similar or exclusive privilege so far as you know? A. I don't know what they did by other people.

Q. I understood you testified something about a lease to the other company? A. That was in regard to toll; but I don't know whether they gave

them the exclusive privilege or not, but they gave them the right to collect the same toll.

Q. But they did grant you an exclusive privilege? A. Yes, sir, as in my judgment they had the right to do.

MR. TULLY: Did the Legislature invade their rights and break down the rule of the Board and let other roads be built? A. They did, on that side of the valley, to my great misfortune and that of my associates. But those were previous Commissioners; that was not these Commissioners.

Q. The examination goes to the entire management of the valley. A. Some of those Commissioners are dead now.

Q. Have you ever been indemnified for loss, wholly or in part? A. The State some years ago, at the request of the Commissioners of the Yosemite Valley, the Legislature appropriated \$25,000 for the purchase of roads and trails and their improvement, building bridges, and general improvement of the valley—the condition of the Act being that \$10,000 of that money should go to the purchase of so much of the Coulterville road as lay between the lower iron bridge, which was the eastern limit of that road, and the Cascade Falls, which I had built, and which was the property of the Coulterville Company.

Q. The \$10,000 was to go for your road? A. No; it was simply to buy the road, that was all. There was no indemnity or anything of that kind. It was simply to buy the road and to make that public property. It was a transfer of that property, that belonged to that company, to the State.

Q. Was that road within the grant? A. Certainly.

Q. And to buy it from whom? A. From the Coulterville Road Company, that built it by their privilege. That was a condition of the agreement that was made, that the State should have the privilege, at any time, to buy it at a price that should be agreed on. They asked me if I would take \$10,000. I told them that was \$2,000 less than the cost of that part of the road, but that I would take it.

Q. I understand it was a condition enabling them to buy their own road? A. No; it was not their own road. They didn't put a dollar into it.

Q. Then they had given somebody a right to build a road in there that they could subsequently sell to the State for \$10,000? A. Yes, sir; myself and my associates.

Q. They had granted the privilege to you to build a road within the grant? A. Yes, sir.

Q. They subsequently making arrangements whereby the State should pay you for the road that they had given you the privilege of building within the grant? A. Yes, sir; they did that at the time they gave me the privilege. That was a part of the agreement. I think that was all legitimate.

Q. Did you desire the Legislature to empower you to sue the State in 1886-87? A. I not only desired to do that, but both branches of the Legislature passed an Act allowing the Coulterville Road Company to sue the State, but the Governor unfortunately pocketed that bill and it did not amount to anything.

Q. Did you obtain the right? A. No; the Governor was in the way, unfortunately.

Q. What do you think of the condition of the valley? A. I would like to say that that Act was passed by the last Legislature with only four dissenting votes in the Senate, and only eight dissenting votes in the House.

Q. Are those fences, artistic or ornamental, fit for a great national park? A. I have been in the Central Park, in New York, and I have not seen any such fences there.

Q. Do you think those fences mar the beauty of the valley, and interfere

with the privilege of the public in its general enjoyment? A. I most certainly do.

Q. Does this valley bed show any conditions of improvement and care, such as are bestowed on other great parks—Golden Gate Park, for instance? A. God made the Yosemite Park, and if they had let it be as God made it, I think it would be first rate; and man made Golden Gate Park; it is a beautiful place, to be sure, but it is not any such park as Yosemite.

Q. They didn't have the same material to make it from? A. It was not the same boss that made it, either.

Q. Do you think the Yosemite would be bettered by a more liberal policy in allowing competition under State police regulations? A. Well, I don't want to say anything about that; that would be only my own opinion.

MR. MILLS: Give your own opinion. There is nothing so valuable as an opinion.

MR. TULLY: The gentleman has answered the question.

THE WITNESS: I have been speaking all along about keeping the park open.

Q. Don't you think all parties—Commissioners, residents of the valley, and the public at large—would be better served, and all get along better, if the State made more laws governing the valley and the Board less? A. Well, no, I don't. I think the Legislature, unfortunately, knows very little about the Yosemite Valley. They ought to go there; then they would be posted about it, and better able to legislate.

Q. Don't you think the Board and the public would understand the situation better if they were both under the control of a code prepared to restrain them by the Legislature? A. That is a mere matter of opinion.

Q. State the transaction in reference to your letter to Governor Waterman in reference to Hutchings, and what reply was received? A. In regard to that question I would like to state that I don't know how that comes here, because I sat down quietly in my office, in April last, when I knew that the term of service of four of the Commissioners would expire soon, and wrote Governor Waterman a letter, and it was to suggest to him the appointment of J. M. Hutchings, who had been associated with the valley longer than any other living person that I knew, and who, I thought, had special fitness for the position of Commissioner; and I gave the Governor some reasons, in brief, why I thought it would be the proper thing to appoint Mr. Hutchings. I did this without Hutchings' knowledge; I had not consulted with him about it at all. I thought he would agree well with the Commissioners who were there, and that he would help them and they would help him, and that things would go along well, and the valley would be well administered if Hutchings was on that Commission. This is my idea; and I communicated that idea to the Governor, as any other citizen would have the right to do. I knew the valley well, and I knew the Governor did not know it much, and I guess he had not been there at that time.

MR. TULLOCH: You spoke awhile ago about some hay having been raised in the valley. Was that timothy, or barley, or both? A. I don't know. I am not a farmer. It was hay.

Q. Do you know about how much it was sold for a ton? A. Well, I have heard Harris, who raised the hay, tell me how much he got for it. I think he got at the rate of \$50 or \$60 a ton; somewhere along there.

Cross-examination.

MR. MILLS: I would like to state to you, Mr. Chairman, under a question of personal privilege, that I was in the southern part of the State with a sick family, and was telegraphed to come here. I think it a very great

injustice to me, in my present state of domestic affliction, that I should be required to remain here. I am here summoned as a witness before you to-night, and as a matter merely of personal right, I would like to have whatever testimony I am to give to you given here this evening. Out of consideration for you gentlemen I shall make this cross-examination exceeding brief, even at the risk of not doing justice to the Commissioners, who have asked me to appear for them.

Q. I want to ask you whether or not you know as a fact that right outside of the fences, right up to the edges of the fields, the valley is overgrown with underbrush? Do you know that as a fact? Simply say yes or no? A. There is underbrush growing there, but the Commissioners can get that out of the way.

Q. That is not an answer to my question. We will get right on if you will answer my questions, and I will not delay these gentlemen five minutes. Do you know as a fact that the valley does grow up in underbrush wherever it is not resisted? A. Yes, sir.

Q. Do you know as a conclusion from that fact that if those fences were not there, there would be no meadows there? A. No, I don't know that.

Q. If the valley grows up in underbrush wherever it is not resisted, wouldn't the brush grow on those wet places that constitute the meadows? A. Yes, sir; the business would be to resist that.

Q. Left to itself, without trimming out the shrubbery, the valley would become a wilderness in a short time? A. Yes, sir.

Q. In your judgment the best policy of that valley is to trim out the underbrush? A. Oh, I would trim it out reasonably.

Q. Your idea would be to leave the fences down entirely, and resist the growth of the underbrush? A. Not entirely. I would give the hotels the necessary amount of inclosure.

Q. How much would be required for them? A. Twenty-five acres apiece for pasture for cows and calves, and for a garden for vegetables and small fruits.

Q. How many miles of good wagon road are there in that valley? A. Over twenty.

Q. How much over twenty? A. Twenty-two, I believe it is.

MR. MILLS: Thirty-six miles of wagon road in the valley.

Q. What is the extent of the floor of the valley? How many acres in the floor of the valley? A. The public roads extend beyond the floor of the valley; they go down into the cañon of the river.

Q. That is a part of the floor. Wherever it is accessible by wagon we call the floor of the valley? A. Down to the Cascades it is five hundred feet lower than the floor of the valley.

Q. Any part of the valley that is accessible by carriages we call the floor of the valley? A. There is twenty odd miles, the exact amount I do not know.

Q. How many acres are there in the valley altogether, including all that would be denominated the floor; pine lands and other lands? A. Soon after the valley was granted to the State, Mr. Mills, the State Legislature required the Commissioners, one of whom was Professor Whitney, the State Geologist, to make a survey of the grant, the outside limits of the grant.

MR. MILLS: To expedite your business and to prevent a long history concerning this matter, the object of this is to bring to your minds as investigators, the proportion of that which is fenced and that which is not; that is all the object we have, and if the doctor will give some idea of the pro-

portions—suppose he says there are two thousand acres in the valley and two hundred acres under fence—

THE WITNESS [Interrupting]: In about ten or fifteen words I would have completed my answer.

Q. What is the whole area fenced? A. The Legislature required a survey to be made under the authority and direction of the State Geological Survey, and that survey was made, and the plot of it was given to the Commissioners, and you have it in your archives; that will show what it is.

Q. You can give us an approximation. Your testimony has had its influence upon the minds of the members of the committee as to the extent of this fencing? A. The statement is in your map.

Q. It is a proper defense on our part to show the proportion? A. The statement is made in that survey, of the contents in acres, of each plot of arable land on the floor of the valley. What it is, I don't know, but I have known at one time. You have that map in your archives.

Q. As to the extent of this obstruction, does the obstruction, that is, the fences, prevent any one from seeing the scenery of the valley? A. Oh you can, of course, see the cliffs outside of any fences there are in the valley.

Q. And on any road in the valley? Do not the roads absolutely permeate the entire floor of the valley, so that view points from the floor of the valley are obtained of every object of interest? Is that not true as a fact? A. It is a magnificent view of the valley and of the surrounding scenery you get from the drives.

Q. The fences, do not, as a fact, obstruct the views of the valley in any way? A. If I was a Commissioner, I would have bridle paths and foot paths all through.

Q. If you had the money? You said the State's policy has been very niggardly? A. It has been, and I would try to get the State to be more liberal in regard to these matters.

Q. You have been engaged in teaching the State to be liberal? A. I have, and I think I have helped give the State some good judgment, and some proper action in that direction. I did it at my own private cost.

Q. In regard to a question asked you by Mr. Tully as to a privilege which you acquired there under action of the Commissioners, an exclusive privilege; was that before that Commission was legislated out of existence, or under the administration of the existing Commission? A. No, sir; as I said before, it was under the old administration.

Q. How did the existing administration treat the claim which you presented to the State? A. Very handsomely.

Q. In what way? A. They helped me to get a bill through the Legislature.

Q. Who of them helped you to do that? A. You for one.

Q. I did? A. Why certainly.

Q. Did you bring the matter of your claim against the State before this present Commission? A. Well, this gentleman was not a member of the Commission.

Q. But he is the successor to somebody. The present Commission dates since 1880? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. What action did the Commission take on that? A. They appointed a committee, consisting of Governor Perkins and an executive committee, which was composed of Mr. Raymond, Colonel Jackson, and M. C. Briggs—I presented a memorial—to take that memorial and look into it and make such recommendations in regard to it as they thought to be proper;

and at a subsequent meeting they made a report. The executive committee and the Commissioners made a unanimous report, stating that the Coulterville road had suffered great damage by reason of the unwise action of the State, and that we ought to have reparation.

Q. Did you sell that claim to the Commission? A. That report was unanimously adopted by yourself and the other Commissioners, who were then members of the Commission.

MR. MILLS: I beg leave to state to you that Dr. McLean absolutely says that report was adopted by unanimous consent. A. The records will show that.

MR. MILLS: The records will not show that I voted for it? A. They will show that you presided at the meeting.

MR. MILLS: They won't be true records if that is the case. A. Your memory is at fault.

MR. MILLS: My memory is excellent. No man on earth has a better memory.

Q. Did you eventually sell your claim to the Commission? A. I did; yes, sir.

Q. For how much? A. \$10,000.

Q. To the Commission? A. I sold it to the State.

Q. Did not you sell a claim against the State to the Commission for \$3,000? A. No, sir; I sold the road to the Yosemite Valley.

Q. You sold the road to the Commission? A. Yes, sir.

Q. Wasn't there a condition attached to the sale, that you should not prefer any claim against the State for additional indemnity? A. No.

MR. MILLS: I will introduce the record on that subject.

Q. Did you subsequently return to the Commission and ask them to take back the payment that had been made on that? A. The facts are these in regard to that: That at a subsequent meeting still to the meeting when this report was adopted unanimously by the Commission—that was after a session of the Legislature, when the Governor had vetoed a bill—Governor Stoneman vetoed an appropriation bill of \$25,000, for the buying of roads and trails, and the building of bridges, and so forth, and the general improvement of the valley. Governor Stoneman vetoed that bill. It was the first legislative session of his term. It was in contemplation on the part of the Commissioners to buy that part of the Coulterville road that was within the grant with a portion of that money, and that veto spoiled that expectation on the part of the Commissioners and the road company, and the Governor stated that the Yosemite Valley was there, and it would last, and it could wait for an appropriation; and stated further, as a reason for making that veto, that the funds of the Yosemite Valley were not guarded properly, and ought to go into the State Treasury, and that all money coming to the Commission and going out from the Commission ought to go through the State Treasury.

Q. My question is, did you not come to the Commission and ask them to take back the purchase of that road and take back the money they had paid you? Did you or did you not? A. I wanted the Commission then to buy that road and pay \$10,000.

Q. Did you ask the Commission to take back the money that they had paid on the purchase of that road. They bought it of you for \$3,000 and they paid you \$250 on account, and didn't you come and ask them to take it back? A. The Commission rescinded their action.

Q. Didn't you ask them to take it back? A. Yes, sir; because I was crazy. I was badgered out of my good sense by the Commission in the

way in which they acted towards me. Hutchings was present at that time and so were you, and they really badgered me.

Q. I opposed giving you \$3,000. Did I not oppose giving you \$3,000?

A. I don't know whether you did or not. Oh, yes, you did; because you said the Legislature was the proper party to undertake that business. I think you did; yes, sir.

Q. Did I not secure the veto of your bill allowing you to sue the State, and isn't it known to you that I did? A. No, sir; I don't know that at all. I know that you wrote to the Governor, but I don't know that it was your letter that did that; and I know besides that you said a good many things that were not facts—not intending to lie, or anything of that kind, but you were off from the facts very widely in your letter, and I have got a copy of it and I can prove it to you or anybody else.

MR. MILLS: I merely wanted to show that the Commission had resisted the claim which Judge Tully showed here had been created by that action.

MR. TULLY: Judge Tully I don't understand has shown anything. He has not been on the stand. I have shown nothing.

MR. MILLS: You called out in your testimony the fact that Judge Tully had shown, through the testimony of this witness, that a right had been given there which laid the foundation for a claim against the State for \$10,000. My question to the doctor simply went to that question.

MR. TULLY: I plead guilty to having drawn that out, but you stated that I had shown that.

MR. MILLS: I was unfortunate in my language.

MR. TULLY: I don't want to be put in the category of being made a witness.

MR. MILLS: I did not intend to do that. There are a great many questions that I want to ask the witness, and I will give notice to you, on behalf of the Commission, that we will claim the right to call any of these witnesses when we put in the case of the Commission. I don't know that I shall represent the Commission, but I know that that will be the plan of the Commission. I wanted to ask one further question, with your indulgence.

Q. Are you familiar with the law of Congress making the grant to the State of California? A. Yes, sir; I am familiar with it.

Q. You have been asked a good many questions concerning that law and about the right of the Commission to grant exclusive privileges.

MR. TULLY: We have not asked in regard to that; he has given his conclusions and has been allowed to do so, but we have not asked them.

MR. MILLS: This question will bring a matter to the mind of the committee, and as I am very earnestly in favor of a very thorough inquiry, I wish to call the witness' attention to one matter.

Q. Could any subsequent law passed by the Legislature of the State of California nullify or change the conditions of the grant or the relations between the grantor and the grantee? A. It could not, unless Congress accepted that change. If the two parties should accept the change, then it could be.

MR. TULLOCH: You told Mr. Mills, in your testimony, did you not, that the building of fences did not obstruct the sight of the views. Now, what did you mean by that; did you mean that a man might be on the top of a fence and get as good a view of the country as he could if he were on the ground, or did you mean to say that it was not a matter of inconvenience? Did you not, in your testimony, say that you believed the fences were an inconvenience to parties who elected to move about in the premises? A. I think so.

Q. And then in your testimony to the gentleman awhile ago, you meant

to say, did you not, that the fences did not prevent a person from seeing sights, but that it did impede the progress of parties—their locomotion? That was the meaning, was it not? A. I think the general public have got a right to go anywhere in the valley, and that that privilege is restricted by those fences.

MR. MILLS: You say, however, that it was necessary that some fences should be there? A. Yes, sir.

Q. Then to the extent that fences should be there, the public would have a right to go into those lots? A. The fences that are absolutely necessary for the proper enjoyment of the valley.

Q. Some fences are necessary? A. I think so.

Q. And there are about two hundred and fifty acres under fence? A. I don't know how much.

Q. Some fences are necessary? A. Undoubtedly.

Q. Does the existence of fences, taking into consideration the roads which ramify the whole floor of the valley, does the existence of fences, where they exist, destroy the scenery, the sublimity of the scenery, the views which the people go there to see? A. No, I don't think they do.

Q. Do they prevent any man from enjoying any part of the scenery which he might enjoy if the fences were not there—any part of the scenery? A. No; I don't think they do; but the disadvantage that comes to the public from the existence of those fences that are not necessary to the proper public use of the grant lies more in this direction: that the people of the State and of the United States who want to go there—for instance, if I wanted to drive a team into that valley, and was a taxpayer of the State and helped make the roads, through my taxes that I pay, and help build the trails, and so forth, and help the Commissioners with the funds that are necessary, if I wanted to drive with my team and camp anywhere on any of those delightful meadows, I am not allowed to do it, and I think that is a proscription.

Q. Would those delightful meadows exist if it were not for the fences? A. I think they would. They were there before the fences were built.

MR. TULLY: You have testified on cross-examination—at least you have said you admitted that those roads were so laid out that you would obtain nice views of the principal scenery in that valley. Do you consider that the pleasure of tourists in going there is not confined to a drive along those roads, and is not confined to a certain point; or is it not rather an enjoyment of the whole valley, to go off into the quiet nooks, and have free access to all its beauties, outside of the general scenery? A. That is what I think ought to be done.

MR. MILLS: Then as to the question of proportion; the restriction relates only to that portion which is fenced in. Are there not a vast number of quiet nooks in this valley which are not obstructed? A. Lots of them.

Q. Is there any objection to anybody going into one of those fields for a picnic? A. I don't know whether there is or not.

Q. Isn't there ground set apart for campers that is ample for their use? A. There is ground set apart, but I don't think it is ample for their use.

Q. That is merely a question of judgment? A. There was six hundred campers in the valley last year.

Q. Isn't the ground of the campers inclosed so that their horses may be turned loose? A. Yes, sir; but they don't get enough feed, and they have to buy hay and grain.

Q. If the ground under cultivation was treated as the ground the campers use, would the feed be any better there? A. There would be more of it, of course.

Q. Why? A. Because there is more territory.

Q. There is plenty of territory left which might yet be set aside? A. What is left is pine land, and coarse growth.

Q. Is it not true that the valley, left to itself, would grow up entirely in underbrush, more rapidly, and to trees? Is that not true? A. Mr. Mills, a good Commission would not allow it to grow up.

Q. The question is, would it do that thing? A. If it was left wild and in a state of nature it would grow up; yes, sir.

Q. Is there not a great lot of ferns and brakes that grow up in the valley? A. Certainly.

Q. Isn't there a part of the season when it is exceedingly dry in the valley? A. Yes, sir.

Q. Would there not be danger in that narrow gorge, with walls three thousand feet high on each side, of the whole valley burning up in the dry season, should it take fire, if the valley was allowed to grow up in that way? A. I don't think the valley ought to be allowed to grow up in that way.

Q. You think it ought to be burned over every year? A. No.

Q. It ought to be trimmed out then? A. Trimmed out; yes, sir.

Q. The trees should be cut out? A. This undergrowth you speak of, unless it may be a clump here and there, to add to the beauty of the valley.

MR. TULLY: One question has been suggested to me. Do you know of any road through the center of the valley that has been fenced up at the instance of private parties or for the benefit of private parties? A. Do you mean a fence running across it?

Q. Yes? A. No, sir; I do not.

MR. TRUMAN: I would like to ask one question. If he says there is not ample room for camping purposes, and that what there is there is fenced, why should not there be more fencing instead of less fencing? A. I think under proper restrictions, that campers could be accommodated in the open valley, by proper restrictions and regulations of the Commission without any fences at all.

Q. In the construction of roads and trails and the building of bridges, isn't it necessary to do some fencing? A. I don't know of any necessity for fencing there.

Q. To protect the roads? They have been made very handsome this year. Three new bridges have been built and a great many new trails and roads built there this summer. Isn't it necessary in the preservation of those roads to here and there build some fences? A. I was in the valley last summer, but I didn't ride about the valley much at that time. I think these roads and bridges were built after I was in the valley this summer.

MR. TRUMAN: I don't think any have been built this year, but we have had requests from different parties to build fences, and we voted against it. A. I think that there were some bridges built this year.

Q. As a general thing don't you think it necessary to do fencing here and there? A. If I were a Commissioner I would try and get along without any fencing other than what was necessary for the hotel.

Q. Do you know who built the first fences there? A. Lemmon built the first fences; the first settler in the valley, James G. Lemmon.

Q. Who built the first wire fence, do you know? A. I don't know, unless it was Hutchings. He might have built a wire fence; I don't know. Hutchings built fences early.

Q. Did you say that the sawmill that was erected to saw lumber for the Stoneman House was in the valley or out of the valley? A. It was out of

the valley; but Hutchings, very improperly, long before that, built a sawmill in the valley. That was when he was contesting the right of the Commissioners to the property, the territory upon which he built his mill.

Q. I was going to ask you if you ever saw a sawmill in the valley? A. Yes; Hutchings built one.

MR. MILLS: How late was there a sawmill built there by Hutchings' recommendation? A. Hutchings built it—

Q. Was there a sawmill built there lately by his recommendation? Within the past few years? A. Hutchings recommended the repairing of the old sawmill, and I bucked against that to the extent of my ability.

MR. HOOK: Dr. McLean, was the grass sufficient there before 1872 or 1870 for campers? A. There was lots of it; yes, sir.

Q. Was there in 1875? A. Why, certainly.

Q. Sufficient to maintain and feed horses in the valley; campers' horses? A. I should think that if it was all open to them, there would be; but it was shut up.

Q. Wasn't it a fact that in 1872 and in 1875 that campers had to purchase hay and barley? A. As far back as 1872? I don't know about that, because a great deal of fencing has been done since 1872, Mr. Hook.

MR. HOOK: This was 1872 and 1875 that I am asking about, particularly. I know that I had to buy it myself.

MR. TULLOCH: Were you there at any time before the fences were built, or when there was but a small quantity of fences? A. Hutchings had fenced in considerable territory.

Q. When you were there when there was but little fencing could you go round about and look at all the places that you elected to look at without the undergrowth stopping your progress? A. Except what Hutchings and Lemmon, who were old settlers, had fenced in as settlers.

Q. The undergrowth and jungle did not impede your progress in such a manner but what you could gain a good view of anything you elected to look at, did it? A. No; you could go about at that time.

Q. Now, you spoke awhile ago about lands and places being inclosed by fences, and campers putting their horses in there. Were they charged a rental for that purpose? A. No, sir; I think not.

MR. MILLS: The further back you go in the history the more open the valley was? A. Yes, sir.

Q. The growth has been due to preservation, largely. Go back to the time when Mr. Hutchings, the pioneer of this valley, visited it, and it was much more open than at any subsequent period? A. Yes, sir.

Q. Was that not due to the fact that the Indians burned the valley over every year? A. I have no personal knowledge.

Q. Was it a matter of tradition that that was the case? A. I suppose it was.

Q. The gentleman's question goes to the question whether this park existed at that time, and I want to direct your mind to the fact that the further back you go the more open it was? A. I wish to say in regard to this whole matter that it was a surprise to me that I was summoned to come here. I got a letter from Mr. Meany, Chairman of the Committee on Yosemite in the Senate, at my home, and in response to that—it was a polite request to come up here—I came. He referred to a resolution, and I looked at that resolution, and I saw that really I was not a proper person to testify, because I had made no charges against the Commissioners, and he wanted people who had made charges to come, and I am here to-night without my own agency whatever. I was hunted up and sub-

pœnaed by the officers of the State to appear here to-night; so that I am here not of my own accord.

N. S. STOCKTON.

Being sworn by the Chairman, testified as follows:

MR. TULLY: Where do you reside? Answer—In Mariposa County, at Hornitos. Hornitos is my Post Office.

Q. You understand the nature of this investigation, Mr. Stockton? A. Yes, I think so.

Q. Certain charges have been preferred against the management of that valley; not against any particular individual, but against the management? A. Yes, sir.

Q. And those charges are specific and numbered. We will read you the first charge, and ask whether you know anything in regard to it or not? [The clerk read the first charge.] A. I know nothing about it.

[The clerk read the second charge.] A. I know nothing about it.

[The clerk read the third charge.] A. I know nothing about it.

[The clerk read the fourth charge.] A. I know nothing about it.

[The clerk read the fifth charge.] A. Well, I do know of portions of the valley having been plowed up.

Q. How much of the valley do you know of having been plowed up? A. Oh, I don't know. I would judge when I was in the valley last from thirty to fifty acres were in cultivation.

Q. By whom was it cultivated, do you know? A. By Mr. Harris.

Q. Do you know whether he cultivated it under a lease, or under what terms or conditions he cultivated it? A. Nothing, only from what he told me.

Q. What did he tell you about it? A. He told me that he had a lease of the property.

Q. Was that land inclosed? A. Yes, sir.

Q. With what kind of an inclosure; a board fence, wire fence, or brush fence? A. Board and wire fence combined; some boards and some wire.

Q. Was the land inclosed in this inclosure all cultivated, or was only a portion of it cultivated? A. Only a portion of it, I think, if I remember correctly. [The Clerk again read the fifth charge.]

Q. Do you know anything in regard to that charge, which charges that it has been done for private gain? Do you know whether it has been done to the injury of the revenues which would be legitimately derived from that on behalf of the State? What do you know about the rental being appropriated or applied to private use? A. No, sir; I know nothing at all about the appropriation of money derived from rental; I know nothing about it.

Q. If I understand it, private use would mean for it to be appropriated by the Commissioners or some person through them. What do you know about the burning of shrubbery? A. Nothing at all.

[The clerk read the sixth charge.]

MR. TULLY: I will state, Mr. Chairman, that when I have asked the question, before we pass to the next question, any question the members of the committee desire to ask in regard to that charge, they have the right to ask it.

MR. HOOK: How many acres do you think were inclosed there, Mr. Stockton? A. Well, I would estimate anywhere from two hundred to three hundred acres.

Q. How many acres do you think were in the bottom of the valley, or in the valley itself? A. Well, sir, I couldn't estimate that very correctly.

Q. What do you think? A. What character of land? Do you mean all the lands between the walls of the valley?

Q. Between wall and wall; yes, sir? A. I suppose there is some two thousand acres.

Q. There are only two hundred and fifty fenced in? A. I should judge there was about that when I was there last. I don't know what is in the valley now. It has been some little time since I was in there.

Q. If this was not fenced up, do you think the underbrush would grow up there, to the detriment of the valley? A. I don't know. I was there a good many years ago. I was there occasionally along for quite a number of years, and from the time I first went into the valley until the last time I went there it had not grown up very much.

Q. Wasn't it a fact that along in the seventies there were a great many clear spots in the valley; that it did not grow up in underbrush and shrubbery and ferns and brakes? A. Well, I think there were places they didn't grow up.

Q. Was there twenty or twenty-five acres in some spots? A. I think so. [The clerk read the seventh charge.] A. I know nothing about that.

[The clerk read the eighth charge.] A. I know nothing of it.

[The clerk read the ninth charge.] A. I have no knowledge about that.

[The clerk read the tenth charge.] A. I have no knowledge of that.

[The clerk read the eleventh charge.] A. No knowledge whatever of it.

[The clerk read the twelfth charge.] A. I know nothing of that only from rumor and newspaper accounts.

[The clerk read the thirteenth charge.] A. I know nothing about that.

[The clerk read the fourteenth charge.] A. I know nothing about that.

[The clerk read the fifteenth charge.] A. I have no knowledge of that.

[The clerk read the sixteenth charge.] A. I have no knowledge about that.

[The clerk read the seventeenth charge.] A. I have no knowledge of any such thing.

[The clerk read the eighteenth charge.] A. I don't know anything of it.

[The clerk read the nineteenth charge.] A. I have no knowledge about that.

[The clerk read the twentieth charge.] A. I don't know anything about it.

[The clerk read the twenty-first charge.] A. I have no knowledge of any such thing.

[The clerk read the twenty-second charge.] A. That occupies so many points that I don't think that I could answer that question. I have answered all the questions that I have any knowledge of in reference to the valley, and those questions that I have answered, almost all of them, cover this last question.

MR. TULLY: Mr. Stockton, under that question you would be allowed and expected to answer anything that you know, any substantial facts with regard to what might be considered general mismanagement of the valley; anything done in the valley that tends to destroy the beauties of its natural scenery, or to interfere with the ingress or egress of parties desiring to visit it, and the general enjoyment of the valley. It is broad enough to cover all that; any obstacles that may be thrown in the way of the free access to the beauties of the valley, and to examine its natural beauties in every shape? A. Then we have to assume considerable that has been published

in the papers, and general report, and there has been special privileges granted; fences have been erected there that prevents people from occupying the whole valley.

Q. Of your own knowledge do you know whether it is a fact that those fences have been built, and that they do obstruct the ingress and egress and free access of those visiting that valley to parts of the valley from which they would desire to view the valley, and observe and examine its scenery and its natural features? A. These fences that are made in the valley certainly exclude parties from occupying that part of the valley, which otherwise they would be very glad to occupy; especially campers that go into the valley and would like to have the benefit of a portion of the best part of the valley for grass.

Q. For camping purposes and grazing, and taking care of their stock? A. Yes, sir.

Q. Do you know whether, under the management of that valley, from the time it has been in the hands of the Commissioners, do you know whether the general management has been such as to exclude and interfere with the free enjoyment by tourists of that valley? A. Yes, sir; of this portion which is fenced.

Q. It is an obstacle to the free enjoyment by tourists of the beauties of that valley? A. Well, not particularly the beauties of that valley, but the enjoyment of that portion of the valley that they are excluded from by these fences.

Q. Some persons might desire to go off into these little byways and by-paths and corners, holes and corners, and consider that they were part of the beauties of the valley. Have they free access to those grounds, or do those fences that have been erected interfere with that free use which all visitors should have to visit any and all of its beauties, whatever they might consider beauties of the valley? A. They do.

MR. HOOK: Before those fences were erected, didn't those campers' horses run at large in the valley? A. They did when I went there.

Q. Wasn't it a fact that there were a great many horses stolen and driven out of there, and that was very inconvenient to the campers? A. I don't recollect anything about that.

Q. Do you recollect anything about some horses being driven out in 1875, and campers having a great deal of trouble getting them back? A. I don't recollect that.

Q. Do you know whether the horses were not so vicious and wild there that it prevented people from traveling in the valley, along in the seventies; people turning wild horses out with long ropes on them, to the detriment and with a liability to injure persons and the property of the campers? A. No; I am not aware of that.

Q. Don't you know that in the seventies there were cattle driven in there, and that they fed on the bottom of the valley? A. You mean stock cattle?

Q. Yes? A. No, sir; not that I am aware of. I never knew of cattle being driven in there by drovers. I know that parties going into the valley and having business there took in some stock, but I never knew of stockmen driving cattle into the valley as grazing ground.

MR. TULLY: Do the inclosures in that valley interfere with the convenience of persons and visitors going in there with their teams and camping, and obstruct that free access to the valley with their teams that they ought, in your estimation, to have? That a tourist or a person going there for the purpose of enjoying the pleasures of that valley, are they obstructed by those fences to the extent that it interferes with the free enjoyment of those parties, with their teams and wagons, campers? A. Yes, sir; I think so.

MR. HOOK: What amount of space is allotted to campers in the valley; what is the number of acres? A. I am not aware that there is any portion of the valley that is allotted exclusively to campers.

MR. TULLOCH: How much do you think there is of meadow land in the valley? A. What do you mean; meadow land suitable for agricultural purposes?

Q. Yes; such as valley land, meadows, arable land? A. Perhaps two or three hundred acres.

Q. Is that inclosed with fences? A. A large portion of it.

Q. Is that inclosed down towards the Bridal Veil Fall? A. No, it was not when I was in the valley last.

Q. Is it inclosed up towards Mirror Lake? A. No, sir; that upper part of the valley was not inclosed—well, it is inclosed, too, because there are fences running from the bridge above the Barnard hotel across to the bluff there. There is a wagon road out, but that wagon road is not closed in any way. Well, with the exception of this wagon road out, it is inclosed.

Q. Is the same piece inclosed that Hutchings had inclosed in 1875, near the Yosemite Falls; the river road, right due west of the falls? A. I don't think it is; I forget whether it is or not, but I believe not.

MR. MILLS: I have no questions to ask this gentleman, except one. I think he stated in direct examination that there was no exclusive place for campers? A. That there was no ground set apart exclusively for campers.

Q. Did you state that? A. Not that I know of.

MR. HOOK: There is one other question that I would like to ask him: whether any stumps of trees that have been cut down are left still standing there; do the stumps still remain there? A. I don't know whether they are there or not. I really could not answer that question.

MR. TULLOCH: Is there any ground left for campers to camp on if they elected to? Is there any ground left that the campers might camp on if they wanted to—any ground that is not inclosed at present? A. There was when I was in the valley last.

Q. When were you there last? A. Something over two years ago since I was in the valley.

Q. Was it considerable land, or just small spots here and there—was it preferable places? A. Now, for what purpose—to obtain feed for your animals?

Q. Yes, such as a camping place that you yourself would prefer? A. When I was there last there was not any feed for my horses. I bought my feed.

Q. Then there were no camping places that you yourself would prefer, provided you were going there as a camping party? A. There was no place that my horses could get feed that I thought they could live on.

MR. HOOK: In 1872 and 1875 was there sufficient grass there to feed horses that traveled that long trip to Yosemite Valley, without buying hay and barley? A. Well, I couldn't answer that in those years. It is pretty difficult for me to remember dates.

Q. That was a time when there were a few fences there; very few fences in the valley? A. Well, I don't know whether there was sufficient feed there or not. In early days, when the whole valley was open, I was never there at any time that there was not plenty of feed.

Q. Is there strength enough in that feed to maintain horses after the long jaunt to the valley, and traveling up those trails? A. Well, I suppose horses can be maintained on such feed. We have to work our horses in the mountains in handling stock. I have been accustomed to driving

stock into the mountains for a good many years, since 1864. We take our horses up in there and they have to subsist on the natural grasses.

Q. The question that I wanted to draw from you is this: a great many people who go up there camp and hire their teams in San Francisco, Oakland, Martinez, Stockton, and other points, and travel there with livery teams, and teams that have been used to being kept in a stable? A. Such horses would do very poorly on any natural grass at all—any natural grass in the State.

Q. What is the price of hay in the valley at present? A. I do not know the price now. When I was there last I believe I was offered timothy hay for \$40 and barley hay for \$50.

Q. What was the price of ground barley? A. I don't recollect.

Q. Do you know what the cost of freighting barley and hay into the valley is? A. No, sir; I do not.

MR. TULLOCH: You don't know what the price of hay or barley was in the last two years? A. No, sir; I do not.

Q. Don't know anything about it? A. No, sir; I would like to state to the committee and others that I was not aware that I was going to be brought before this committee. It was not a voluntary act on my part; it never entered my mind that I would be before this committee until I was summoned. I came here to answer a summons compelling me to be here.

W. H. MILLS.

Being sworn by the Chairman, testified as follows:

MR. TULLY: Where do you reside? Answer—San Francisco.

Q. Are you acquainted with Yosemite Valley and its conditions at present? A. Yes, sir.

Q. And have known what its conditions have been for some years past? A. I have been familiar with the conditions of the valley since 1880.

Q. You understand, Mr. Mills, the nature of this examination; what the object of it is? A. Yes, sir.

Q. Specific charges here have been preferred and you are expected to answer them?

MR. HOOK: Are you one of the Commissioners? A. Yes, sir; I am, sir.

[The clerk read the first charge.] A. It would be entirely unfair, I think, Mr. Chairman, for me to answer. Of course I say no to that proposition. I think the Commission has done the best they could, and I don't want to take any advantage of being a witness in this matter to put in testimony here that should not go in.

[The clerk read the second charge.] A. The Commissioners have no knowledge of any such thing, that I have ever heard. I will not pretend ignorance of the nature and origin of this charge, and if the Chairman of the committee will permit me, I will simply say what the origin of this charge is.

MR. TULLY: I don't know that that is material, except in so far as it is supposed to have had its origin in the mismanagement of the Commission.

A. That is the nature of the charge, that the Commission did permit the breaking of private property.

Q. And your answer would be directed to the refutation or the confirmation of that charge? A. I should explain this matter.

MR. HOOK: As we have allowed latitude with others, wouldn't it be well to allow Mr. Mills some latitude?

MR. TULLY: Mr. Mills is able to make his own statement. I don't desire to make him a witness against himself. A. I prefer to be a witness for everything there is in it. I am here to tell all I know concerning this matter. I have no concealment to make. I have no other defense to make before the Commission of my part in this matter than the question of my judgment. I have done the best I could as a Commissioner. This charge relates to some property which was under lease, I think, to Mr. Robinson, and I would thank Mr. Robinson to correct me in any statement that I may make concerning it. I think the charge was against the Guardian and not against the Commissioners. No charge against the Commissioners is lodged here accusing them of breaking in. He had a room, under lease, and there was some dispute between him and the Guardian—he had still a lease—as to whether tenure of the lease had expired, or something of that nature.

Q. Wasn't this Guardian appointed by the Commissioners? A. Yes, sir. But of course the Commission could know nothing unless it was reported to them. As a Commissioner I never heard of this, and in my judgment the matter would be better explained by Mr. Robinson, who is the complaining witness, and who will eventually be put on the stand.

[The clerk read the third charge.] A. I presume that this relates to the destruction of two old hotels in the valley. I will be fair to the parties who are making these charges. For a long time—in fact, let me say to you, gentlemen, that when I first went on the Commission I became thoroughly persuaded that it would be necessary, very soon, in order to accommodate the increasing travel, owing to the greater intimacy of travel between the different parts of the world and Yosemite, that it would be necessary to construct new hotels. I saw very plainly that the hotels had been constructed in primitive times and in a very primitive manner. Take, for instance, the hotel that was called Black's hotel. That was a cloth-lined affair, and very dangerous in many respects.

MR. HOOK: When was that hotel built? A. That was in the valley when I went in. My first visit to the valley as a Commissioner was in 1880. The hotel was a mere shell, a mere frame, and without modern conveniences of any kind. It was a rough, backwoods hotel. As the prospect or opportunity approached the Commission of constructing a decent hotel in the valley, the repairs were neglected on these hotels, because it was perfectly apparent to us that a good hotel would accommodate all the travel that would visit the valley. The accommodations of the valley are fully equal to the demands made on them, except in very exceptional instances where large tourist parties sometimes come in at the same time, but that would be rare, and there never has been a time, according to my inquiry—and I have made diligent inquiry about this—when the hotel accommodations of the valley have not been equal to the demand. Now when the new hotel, with very much enlarged accommodations, came in, of course the accommodations of these old hotels, which were sufficient at one time, would make a surplus of accommodations. To save the State's money and to prevent its being squandered upon buildings which were so old as to have outlived their usefulness, lived their life, and their durability had been thoroughly tested, and the snows of winter were liable to break them down, repairs were withheld on them; and Mr. Hutchings, who has had great knowledge of the valley, and for a long time was a Commissioner, recommended, in his report as Guardian for 1883 and 1884, the destruction of these buildings. His report will be introduced here as testimony, eventually. His judgment in that matter accorded entirely with mine. They were unsightly; they were scarcely fit for use.

The last year I was in the valley I was accompanied with my wife and a number of lady friends, and we stopped at one of these hotels. They were utterly unfit for use as hotels; and the contrast between their condition and that of the new hotel, after the new hotel was built, was so great that we found it impossible to lease them; nobody wanted to use those hotels. Therefore they were taken down in pursuance of a very deliberate, very calm judgment as to the very best use that could be made of the materials. The material in them was used again in the construction of other necessary buildings in the valley, and putting a very valuable improvement upon Barnard's Hotel, increasing the accommodations and the elegance of the accommodations, which leaves two very good hotels in the valley, which are fully equal to the demands that will be made upon them. Permit me, Mr. Chairman, to say here, that eventually, when railroad communication approaches the valley, and the facilities for travel become better and the cost much less—when I first went on the Commission, the cost of visiting the valley to an individual was very much over \$100. If a gentleman took his wife and his son with him, it cost \$400 to go to the valley. That was about as cheap as he could go. That was not very much less than the cost of a trip to New York, or Europe from New York; and the cost was an obstruction to the number of visitors; hence, very few have gone in. As railroad communication approaches the valley, as it will—I hope it will never enter the valley—the number of people going there will be much larger. Eventually, this park will attract the attention of the world, and the number of visitors will increase very greatly, and the revenues of the State of California, in consequence of tourist travel here, will be correspondingly increased, and it will be necessary to build another hotel sooner or later. These other hotels, not being at all of use, would be unsightly. They would be the refuge for campers, irresponsible parties, and tramps—things of that sort. They had become unsightly by their windows being broken, and they were removed, not only in accordance with the universal judgment of the Commission, but by the very strong recommendation of Mr. Hutchings, whose judgment has been deferred to generally, and particularly by myself. I have consulted Mr. Hutchings many times as to my duty, and have always found as much light and wisdom as I could find at any other place. That is a simple history of the destruction of those hotels. I beg leave to say that I was very strongly in favor of their destruction. I think I did right. I think the Commission would have done wrong not to have removed them. That is my judgment. If you had been Commissioners you might have had a different judgment. In my opinion you would have had very bad judgment if you did not act as we did.

[The clerk again read the third charge.] A. I presume Mr. Robinson intended to bring up the question of the destruction of those hotels under this charge.

MR. TULLY: Was the vote of the Commission unanimous in removing those buildings? A. I don't remember, but I think it was.

Q. At or about the time of this destruction of those hotels, did Mr. Leidig offer to rent one of those hotels, subsequently or at that time? A. No, sir; Mr. Leidig has sold out.

Q. Was any offer made to rent Leidig's hotel? A. There was none before the Commission. When we were in the valley, when this action was taken, Mr. Leidig had sold out to the other two hotel keepers, according to the information given to us as Commissioners, and received by us officially; they had simply purchased his departure and he was gone; he was not before us. Leidig had enjoyed the use of one of those hotels ever since I

had been a Commissioner, and, according to my information, for a long time before without rent. The hotel did not bring any revenue to the State at all; we allowed Leidig the free use of that hotel. There was no application to lease those hotels before the Board.

Q. Didn't Snow make any application? A. I am not aware of Snow's having made any application. Upon this matter I will state that the applications themselves are filed always with the Commission. I have no recollection of any application being filed. If such an application was made by Mr. Snow, it would be on file, and the Secretary of the Commission, who is the custodian of the archives, would be the proper witness on that question, as to the actual fact. I don't remember that any application was made.

MR. HOOK: Were those hotels private property or the property of the Commission? A. They were the property of the State. The hotels were built a long time ago. Originally, you gentlemen must understand, that private rights grew up in the valley. Those private rights had to be extinguished by the slow process of compromise and purchase, and whenever any one had done anything, or had been permitted to do anything in the valley in the way of erecting structures, a claim against the State generally followed. Those claims were settled slowly and by degrees, and as judiciously as the Commission could; and, with the concurrence of the Legislature, many of them were settled. These hotels had been built and the claims concerning them had been settled, except an indefinite claim which the Leidig family had for the building of that hotel, but which, in the judgment of the Commission, was barred in law, by reason of the fact that they themselves had acknowledged the right of the State, and had occupied that hotel for nine years under a pretended or nominal lease, the idea being that they were to keep the hotel in fair order; keep it habitable, and that they were to expend what would be rent in the repairs. We allowed them to repair the hotel and call that lease money. That was the fact of the case, but they were the property of the State.

Q. What did the destruction of that property cost the State, to extinguish those rights and acquire the right to do it? A. That would be a question of detail. When \$55,000 had been expended by the State of California upon the Yosemite Valley, but about \$2,000 had been expended in any other way than on the extinguishment of private rights. These figures I take from a statement in the "Examiner," which was furnished to the "Examiner," I think, by Mr. Hutchings, who is familiar with the facts. I may be mistaken as to the source of their information; but the early history of the valley, the first item, the leading item, was an aggregate of \$55,000; \$2,000 of that was for the expense of Commission and preservation, and the other \$53,000 had been used in extinguishing private rights. At the last session of the Legislature claims amounting to \$63,000 were passed by the Legislature in the extinguishment of private rights. I take the liberty right here to say, because it is fair to all the parties that are interested in those things, and because my neglect now to testify on that matter might possibly be construed by somebody into timidity, I hold myself entirely responsible for the veto by the Governor of those bills.

Q. Could the Commissioners get sufficient rent for those hotels to keep them in repair? A. The Commissioners, under the new conditions, with the new hotel and its very much enlarged and elegant accommodations, could not have rented those hotels for anything like legitimate hotel purposes, as I will show in answer to a question later on.

Q. Were those hotels, as they stood at the time you tore them down, an eyesore to the valley? A. Indeed, they were. They were an offense to

the eye; Black's hotel, particularly, was. We discussed the question in Commission, both as individuals and collectively, what use could be made of those hotels. We thought for awhile of preserving a little portion of the Black hotel, which was of two stories, and which was of later construction, and we thought it might be used for a storehouse in certain ways; but the tendency of patrons of hotels being towards the upper portion of the valley—you gentlemen understand that these hotels are strung along; first comes Leidig's, and then Black's, and then Barnard's, and then the new hotel; estimating roughly, it must be four miles about from Leidig's to the new hotel.

MR. HUTCHINGS: It is one fourth of a mile from Leidig's to Cook's; one half a mile from Cook's up to my old place, and a mile and a quarter up to the other.

MR. HOOK: Wasn't Black's the first hotel there? That used to be in 1875?

MR. HUTCHINGS: I kept hotel in 1864; long before Black.

Q. Wasn't Black's the first hotel on entering from the Coulterville road?

A. No; that is Leidig's. I am simply explaining to the committee the reasons which influenced the actions of the Commission, and it is for the committee to determine whether those reasons were good and sufficient. To the mind of the Commission they were. To my mind they were. I defend that action. I was very much in favor of it. It added to the general beauty and effectiveness of the valley. One objection I have had to hotels there is that they are dusty. Right up to the door of Black's hotel the foreground was six or seven inches deep in dust all the time; and around Barnard's hotel. I have expostulated with Barnard frequently for not keeping it sprinkled in front of his hotel and making it more pleasant to sit upon the porch. We were set down in dirt and dust.

MR. TULLY: You have stated that the object of getting rid of these hotels was that, in the opinion of the Commission, they were an eyesore, not only to the members of the Commission but to those who went in there. As an eyesore, what is the difference between those buildings that have been destroyed and the present fences, by which the access to the scenery around there has been obstructed? A. The fences are not sightly, but under the conditions which exist in the valley and the rights of the people and the interest of tourists, and the necessities of certain privileges being granted—like the saddle train privileges—a place to turn in horses and so on, the fences are indispensable; and while they are not sightly fences—they are not painted green—they are fairly constructed. They belong to the primitive stage of development in the bed of this valley, which will sooner or later pass away. Some improvement has been made all the time; the bridges are more substantial than they were years ago. Very much progress has been made. But you have a question relating to fences. I will give you my views on that subject. The fences may be an offense to an esthetic taste, but they are a necessity.

Q. Another question in regard to the eyesore; that is looking at it from an artistic standpoint? A. Yes, sir.

Q. Do you know, sir, that these old and ancient vistas of former and prior exploration, that to many tourists coming from the old country or from the Eastern States, that they would be objects of curiosity, and that they would like to see those things? They would like to have pointed out the old Hutchings house, and so on? A. These are not picturesque, and they have no historical value. The Hutchings house and the Barnard hotel have been preserved. These other hotels were temporary structures

for the temporary accommodation of visitors. They were not plastered; they were cloth-lined, and very rude.

Q. Is there such a place as Kenneyville there? A. There is a little village in the valley that is necessary—for example, the tourists and other people must have a store. There is a drug store—a little store, and a blacksmith's shop, which is a necessity. Now, this blacksmith's shop, and this little store and little curiosity shop, where things are manufactured from the natural woods of the valley, constitute a little group of dwellings, in the vicinity of the old Hutchings house or Barnard hotel, which Mr. Robinson, with the irony for which he is noted, calls Kenneyville.

MR. ROBINSON: Kenneyville is at least two miles further up the valley. A. I don't know of its existence, then.

MR. TULLY: You think those new structures that have been reared are an improvement upon the general appearance there? A. What structures do you refer to?

Q. The blacksmith's shop? A. Those were in existence in very early times. They were there when I went there. I would be very glad if there were no blacksmith's shop in the valley. I would be glad if people could go in on wings.

Q. What is the character of those buildings recently constructed there? A. The buildings that were recently constructed there consist of some barns and stabling for the horses, and I have not seen them at all, Judge. They were constructed since the meeting of the Board.

Q. You don't know whether they are sightly or unsightly? A. I don't know whether they are in Eastlake or Queen Anne style.

MR. HOOK: Isn't it absolutely necessary to have a blacksmith shop? A. Yes, sir; that is entirely indispensable. You couldn't get along without it. Stages cannot carry people in there and be out of repair and not be able to repair them.

Q. Don't tourists need them? A. Yes, sir; for the repair of their carriages. Tourists usually go in there with vehicles too light for the mountain roads, and they usually have to have more or less repairs, and have their horses shod, and the blacksmith shop is a necessary evil. It is simply a place of industry. I have known a great many blacksmiths whom I have thought as highly of, in an artistic sense, as I have of many artists whom I am acquainted with.

Q. A blacksmith shop is not quite so artistic? A. The difference between an artisan and an artist is that an artisan usually makes a living, and an artist don't.

[The clerk read the fourth charge.] A. This charge of cutting and destroying timber is one that will require a very careful investigation on your part. The question immediately arose in the minds of this new Commission as to what its policy should be. In 1880, at the first visit to the valley, the question of policy as to the removing of certain timber in the valley came up. A resolution declaring the question of policy was passed by the Board at that meeting, and that is on the minutes of that meeting. It was there declared, in a cautious way, that where the encroachments of the undergrowth prevented a proper view of the scenery, that vistas would be opened; in other words, the Commission committed itself to the doctrine of cutting out undergrowth, and occasionally trees. When a fall has sixteen hundred feet in a single plunge, it fills the atmosphere with a vast amount of spray, and it was necessary for tourists to go very near the fall, and they were unconsciously soaked wet before they knew that this spray was permeating the atmosphere in that way. I was strongly in favor of resisting the encroachments of the wilderness which naturally grows up in

the valley more than it does in the Sierra Nevadas. I have under my eye constantly a large area of land. The floor of the valley is wet, and the seeds of the cottonwood are distributed through the valley; cottonwood trees grow up very rapidly. I have been astonished, in the successive years in which I have visited the valley, to see how rapidly the undergrowth will encroach, where it is not resisted. Left to itself, in my judgment the valley would soon be a very unsightly wilderness. You would get glimpses of the falls, but you would have to go so near that there would be great discomfort in viewing them, to get anything like their grandeur or sublimity. It was related to me, I think by Mr. Hutchings—I derived most of the traditions of the valley, some of the worst and some of the best, from Mr. Hutchings—and it was—

MR. HOOK: Are you going to give the worst or the best? A. I adopted the good ones and rejected the bad ones. There is only one man infallible in the world, and that is the Pope, and I deny his infallibility sometimes. But it was related to me that the Indians used to burn the valley for the purpose of making an open glade and pasture there, and it is my opinion that that was a very good practice. You have also here under examination the Big Tree Grove. There was granted by the United States a large area, covered with *Sequoia gigantea*, which grows in Mariposa County. Some four or five years ago, when I visited the valley, I became thoroughly persuaded that the fagots which had fallen at the foot of those trees was endangering that forest. In early times that was burned over in such a way that a little fire did no harm; but fagots had piled up at the roots of those trees to the depth of four or five feet, and if a fire comes in that forest it will burn those trees up. These trees are the remnants of a past geologic age. They belonged to a species which disappeared from the earth hundreds and thousands of years ago. It will be necessary to remove those fagots and the fallen limbs and the bark from around those trees. None of that has ever been burned, and the result is an accumulation of undergrowth, which in the dry season is dry—and you have a dry season, the same as you have in the Sacramento Valley. Those meadows become brown, just about the time they do in the San Joaquin Valley, and those ferns and brakes. Mr. Robinson shakes his head. There may be a few weeks difference, and it is only a question of a few weeks; those falls dry up entirely, and the only living water in the valley is Glacier Springs; and in some such dry season as that the Mariposa Grove of Big Trees will be burned. This has been the subject of serious consideration by the Commission, as to how to prevent that. There is the removal of this stuff from around the foot of the trees, which would be a very expensive thing, and in my opinion the State will have to stand the expense to properly administer that great trust.

Q. Can't they be raked away from the trunks of trees and then burned up? A. Yes, sir; it can be, and is being done. The Commissioners have authorized that to be done repeatedly, and progress is made all the time in that direction; the removing of that stuff away from the roots of the trees, but leaving the Yosemite Valley to itself; with the grass growing up among this underbrush, and the configuration of the valley is very favorable to a conflagration. That would be admitted by any of you gentlemen, if you visited it. If a fire was built in the valley, by reason of the nearness of the walls, their precipitous character, and the great depth of the valley, there is a constant tendency to produce a great draft; and if a great fire should occur in that valley, it would make it a blackened ruin in a short time. This is a question which appears, in my mind, to be a reasonable

apprehension, and therefore, from the very start, I was in favor of resisting that encroachment of undergrowth.

MR. TULLOCH: In former times was it not customary, from what you have heard, for the Indians to burn the forests off the valley now and then, annually? A. Yes, sir; the Indians do that all over California. I was recently in a portion of the coast country and saw a great fire in the mountains. I inquired of a gentleman in the valley—I was interested in property, as an agent, in the valley, and was afraid it was going to run down to the valley. I was told that it was a universal custom of a remnant of a tribe of Indians to burn it and not allow it to grow up with chemese and chaparral.

Q. How is it that these tribes of which you speak, having very ancient origin, were not affected thereby and burned out thereby, and that they are not burned out now? A. The difference would be in the accumulation of fagots, which would make a fire to burn them out. They burn it every year, and the accumulation of fagots is not sufficient to make a fire menacing the life of a tree. These trees are all blackened. You can see the evidence of past burning through this forest. Many of them are blackened and burned at the roots. The one that you see the picture of, where the stage goes through, was burned nearly through on both sides, and they simply morticed it at the heart of that tree. But there is evidence of former fires also in the valley. You will see, every now and then, a fallen tree or the trunk of a tree that shows that fires have run through this valley in former times. That was when the Indians were Commissioners. I have always respected the ability of the Indians to manage that valley.

Q. The Commissioners deemed it necessary to extinguish the private rights of parties, and therefore you say that some you compromised with, and others you purchased. Why did you compromise with some, and purchase the rights of others? A. That would be a tedious answer, involving a large examination of the records. In some instances the contracts under which the improvements had been made, were so clearly and forcibly drawn as to convince the parties that they had no right of action against the State. In other instances obscurity in the nature of the contracts—one of those contracts that has been the subject of a great deal of legislative action, was the contract referred to by Dr. McLean. That was drawn in such a way as to leave it a very open question.

Q. If they had no rights in the premises, how did the Commissioners compromise? A. We secured a relinquishment of the rights in many instances in unimportant cases—to the butcher shops—some interest in an old fence, or an old building. Some of these things were secured. In some cases we compromised, where a claim was presented for a considerable sum, instead of resisting; we offered a sum and it was accepted. We believe equities existed. I could cite many of those cases.

MR. HOOK: You said just now that you believed in the Indian management of the valley? A. Yes, sir.

Q. Do you think the untutored mind has a greater capacity for managing the valley than the cultivated mind? A. The whole of the scenic grandeur of California was better when we first discovered the country than it is now. You take the forests of California; they were vastly more beautiful than now; and whenever you go into what is called the primeval forest, you will find it much more beautiful. The utilitarian spirit of the age is destroying much of the scenic grandeur of this country. The forests of the Sierra Nevadas, in what is called the Fredonia Pass, are vastly more beautiful than they are where civilization has had a chance to make

inroads upon them. The result is, that where the Indians desire to make pasture, they burn it out. You see, as you pass through the Blancos of the Sierra Nevada Mountains, on the western slope, you will see marks of these fires upon the trees, and you will see a magnificent open appearance, that was due entirely to running fires through these forests every year and burning up a moss that will accumulate and finally get as soft as a carpet. You go through the grove of big trees, and as you walk through, you find that moss; and the shatterings have fallen on the moss, and the moss protruded itself through again, until it is like a soft spring mattress, and it seems to be a part of the ground itself; and so it is through the mountains of California; and with the early conditions in which these valleys were at first—you take the Sacramento Valley; it was an oak park. I remember it when I first came to California.

MR. HOOK: Mr. Mills didn't answer my question.

Q. I wanted to get the question answered in your own way, whether the untutored mind has a greater capacity for managing the valley than the cultivated mind? A. I find that the highest wisdom among men has been by accident. Nearly all the great discoveries have been made by accident; and if the Indians accidentally struck a method of taking care of the bed of Yosemite Valley, through the necessity of getting some pasture land for the game upon which they fed, I think that was a very good method of management. I am in favor of keeping the valley as much in appearance as possible of a park.

MR. TULLY: Mr. Hook, the Indians were working under an authority of law higher than the present Commission.

THE WITNESS: The Indians had the good fortune not to be subject to a California Legislature.

[The clerk read the fifth charge.] A. That subject has been gone over, and I deny that anybody, for private gain, has been allowed to do anything of the kind. I know of no such case, and don't believe it exists.

Q. The question is suggested if Coffman & Kenney have not been allowed to do that thing? A. Not to my knowledge. Coffman & Kenney hold a lease of certain property, and if they have plowed any land outside of their lease, of course they must be responsible to the Commission for doing that. That is a question of fact that I could not testify to, as to whether they have plowed any land not leased to them; but if Coffman & Kenney have a lease, the State gets the benefit of that lease, and private individuals do not; and if they have plowed their land in pursuance of a right given to them by the Commission, and in pursuance of the policy of the Commission, that certain of those lands shall be cultivated for the benefit of the gentlemen stationed there, to keep down the price of hay, to give the camper a chance to buy something in the valley—freight is very high in the valley, and one of the effects is to put an indigenous competition, as it were, against the hay hauled in the valley. You put that valley completely at the mercy of teaming over toll roads, upon which high toll is charged, and you will find a different condition of things. The effect of cultivation is clearly in the interests of people visiting the valley, because it does act as a check upon the price of articles that are offered for sale.

Q. I understand your answer then to be that if Messrs. Coffman & Kenney had plowed up that land for private uses, they have the privilege and exercise that under a lease, for which they pay the State? A. Yes, sir; if they have plowed outside of the land leased to them, they are responsible to the Commission, and the Commission has not been apprised of any such misdoings on their part.

Q. Is it a fact that the State has leased to them? A. Yes, sir; we have

leased ground to them. These meadows that you have heard spoken of are always under lease, and the money goes to the State, and is taken out of the State Treasury after it is put in, by authority of the State Board of Examiners. We can pay no bill that has not been passed upon by the State Board of Examiners; the Governor and his coadjutors on that Board.

MR. HOOK: Before this was fenced up, were there not a great many saddle trains and people that hauled stuff into the valley that were very jealous of that feed, and drove campers' teams out of the valley, and run them out? A. Before that was fenced up we had to have horses for the saddle train. We had to have some horses for conveyances; cows had to be there. Nobody could get any milk unless there were cows. Now, take those fences down, and turn your stock out, and you would very soon have your roads injured and made unsightly, if you have a great lot of stock roaming at will in the valley; and, of course, I have testified here that my judgment is that the fences are necessary. It is also indispensable to the pleasure of pleasure seekers to be protected against stock roaming at large. There are more than sixty acres devoted to campers' horses, under a good fence, so as to add as much as possible to their convenience. Upon that one question, right now, I want to make a statement. I have been associated with a number of gentlemen. I am the oldest Commissioner in office except Mr. Madden, my term of office having extended from 1880 until the present time. Commissioners have come and gone; new ones are coming in all the time. I have noticed always a disposition on the part of members of the Commission to favor the people who drive their teams in, in every way possible; and that disposition was so manifest that nobody in the world could have mistaken it, about giving campers every opportunity. We have conceived it to be our duty to make the valley as accessible to people as possible; and one element of accessibility is that of cost. We have, therefore, in every conceivable way, encouraged campers to go into the valley. We have protected them against extortion; we have regulated the price of goods to be sold to them, and in every way we have sought to protect the campers. That has been the universal spirit manifested by my colleagues on the Commission. As to myself—

Q. What was the price of hay and grain in the valley last season? A. The price of hay varies in the valley with the different seasons. If you had to haul hay a long distance, the cost of transportation would be very high. All those mountain roads are toll roads by virtue of the authority of the counties in which they are located, and the Commission has no control over them at all. Now, if hay has to be hauled a great distance, the cost of transportation and the cost of toll would be very high. Therefore, in some seasons the cost of hay would be greater than in others; and when you ask the question what the price of hay has been—

Q. I mean last spring? A. I remember to have made some inquiry as to the price as to which they were selling hay, as I did always, the price of every article. When I would go into the valley I would make diligent inquiry as to what everybody was charging for the accommodations afforded to tourists and to campers, and so on; and my recollection is, that for a part of the year they were selling hay at \$3 a hundred; that would be \$60 a ton; and I objected very strongly to that rate, as a rate that ought to be lowered by competition; and I think for a part of last season hay was sold in the valley for \$60 a ton. I have known it to be sold as low as \$30 or \$35. If the hay fails in the valleys in that vicinity, in those mountains, and must be moved to the valley, it would cost \$100 a ton to take it in. I remember once asking the price of express matter, matter sent into the

valley—such as eggs, butter, and produce—and I think it amounted to 12½ cents a pound for transportation alone.

MR. TULLY: Is it or is it not true that hay has been brought from the outside and sold there at a less price than Kenney & Co. sold it? A. Kenney & Co. have not had the opportunity to sell hay until last year. They had what we call the Royal Arch farm last year, and raised hay and sold it. They used the most of their hay themselves. Kenney & Coffman have from eighty to one hundred horses in the valley, and they have to haul hay in themselves. They have the hay that was grown on what we call the Harris place by common consent, and which, in the official parlance of the Commissioners, is called the Royal Arch meadow, they having that, and they being the principal importers of hay into the valley themselves, because the stage company don't sell any, and haul hay in there for their own horses, so far as my information goes. They got the hay up to about \$3 per hundred. Now, you gentlemen of the committee will understand how difficult it is to regulate the price of barley and hay, because the markets of the world have some influence upon that question; then there is the cost of transportation and the failure of crops of the mountain valleys, so that there has been some irregularity in the price of that article. Sometimes it was reasonable and sometimes it appeared to me to be a little high; but it was a matter that was a matter of Commission regulation, to the extent of our ability to regulate it.

Q. My question was whether or not hay has not been brought into the valley and offered for less than they charge? A. If hay was freighted into the valley and offered for less, of course it was sold, and was sold for less to those who purchased it. Nobody is prevented from hauling a load of hay or barley into that valley. There is no such thing there as a hay privilege granted to any one.

MR. TULLOCH: Do you know as a fact that it was brought in and sold? A. I do not know. I am not familiar with the detail of it. I would say to you that the members of the Commission who are not members of the executive committee have very little to do with the detail management. It passes under review once a year. I was a member of the executive committee two years—from 1880 to 1882.

Q. How many of those Commissioners are there? A. Nine, including the Governor. The law of the State of California makes the Governor the only Commissioner. You will observe that by its terms the law says the valley shall be managed and controlled by the Governor, assisted by eight Commissioners. We Commissioners, therefore, sustain the relation to the Chief Executive of advisory, the law says; but primarily that the management of the valley is lodged in the Governor of the State by the terms of the law itself.

Q. How much does it cost to get hay in there from the surrounding ranches, the immediate ranches, right next to the valley? How much a pound, do you suppose? A. Well, I should think that hay could be hauled in there when it was cheap, not having to pay toll—for instance, the owners of the toll road might deliver hay in there and make a profit at \$35, or \$40, or \$50. I think a reasonable profit could be made at that rate.

MR. HOOK: They have privilege of taking it in there? A. Yes, sir; anybody can haul hay into the valley. There is no exclusive privilege on that.

Q. You spoke about supplies and eggs? A. I say the freight on supplies runs to about 12½ cents a pound. That would be \$12 50 a hundred or \$250 a ton.

MR. ROBINSON: I would like to ask the Chairman if I can have the privilege to give Mr. Mills some information about the hay question.

THE WITNESS: As I have already stated to the Chairman, I am not familiar, and as Mr. Robinson is going to testify before the committee, I should think the committee could wait for Mr. Robinson's testimony.

MR. TULLY: I apprehend that Mr. Robinson will have an opportunity to testify in this matter in regard to what Mr. Mills has said, or anything else.

MR. TULLOCH: You spoke awhile ago of the power being vested in the Governor, and that the power you gentlemen had was secondary in the matter. Do you not all have equal power, practically, in the conduct of commission matters? A. They are carried by vote, but you will understand that primarily the control and management of the valley, by the terms of the law itself, is with the Governor.

Q. He has the high power? A. The Governor, assisted by a Commission.

Q. I believe I have the law; it says: "The premises to be managed by the Governor of the State with eight other Commissioners to be appointed by the Executive, and who shall receive no compensation for their services." It does not state in that that there is a division of authority in the matter, or that they are not at all equal. A. The implication, however, is that the premises are to be managed by the Governor of the State, and he appoints; the appointing power is in him, without reference to the Senate. The result is, that the Governor's policy will prevail, since he will appoint Commissioners who will agree with him. He is separated out from the other Commissioners, and it is stated plainly that the premises shall be managed by the Governor and eight other Commissioners.

MR. TULLY: The word "others" means that the Governor is one of the nine Commissioners? A. Certainly; that is a question of law that only came in incidentally.

Q. The eight with the Governor constitute the nine Commissioners? A. There are nine.

MR. TULLOCH: Do you mean that the powers are not co-equal? A. The exercise of power practically is co-equal. We have always exercised the right of objecting.

Q. A moment ago you said it was the duty of Commissioners to find out the value of articles brought into the valley, what they cost, and what it cost to bring them in, and what they were sold for; you deem it your duty to do so. How is it you don't know the price of hay raised around the valley and what is brought in there? A. Because the work of the Commission is done largely by committees and I have not been on the committee whose duty it was to examine into that specific thing. I know as fact that we inquire into the prices at which articles are sold and furnished to people in the valley, because we regulate the prices of everything. Therefore, we do inquire into it; and I don't remember what the price of hay was, but my impression is that my inquiry elicited the fact that they were selling hay at \$3 a hundred, which would be \$60 a ton. I remember saying it was too high. I thought it was too high for that season.

Q. You spoke of some eighty or one hundred head of horses being kept by Coffman & Kenney. What is the purpose of those animals? A. To carry people up the trails. It is the saddle train.

Q. What do they charge per day per animal? A. \$3; they are allowed to charge \$3.

Q. If they are used a day or part of a day? A. For a trip; if it constitutes a trip to some part of the valley, they are allowed to charge \$3.

Q. If they are gone two hours can they charge that? A. They could take less if they choose to do so, but the maximum that they are allowed to take is \$3 for the use of a horse for a day.

Q. Tourists have the privilege of keeping those horses two hours or a whole day? A. Yes, sir; if a tourist took him and went anywhere at all he would deprive the saddle man of the use of him for somebody else that day.

Q. Wouldn't he have the privilege of taking his lunch and taking a horse and camping out? A. Yes, sir; they generally do just that thing, take the horses and camp out.

MR. TULLY: Where do they keep their horses? A. They keep their horses in a pasture rented by them; that is, they have to turn the horses out. They are frequently not in use. The tourists arrive in the valley with great irregularity. There are times, for a long time, when there is no use for more than ten or twelve horses; then there will be a sudden demand made, and these people who hold this privilege are bound to the Commissioners to keep enough for the customary demand. The result is that a very large proportion of the time only a portion of the horses are in use, and of course it would be exceedingly expensive.

Q. Is it not true that during these times of scarcity of visitors and tourists, and the demands for horses, is it not true that they turn their horses out in the commons and don't restrict them to their own inclosures? A. Not to my knowledge. They are restricted by the rules of the valley, and the Guardian is the executive arm of the Board, and he should enforce the rules. If such irregularities as those have occurred, and complaint had been made to the Commissioners, and they had known of their own knowledge that irregularities had occurred, and had failed to remedy them, then, of course, they would be to blame.

Q. Do you know of any instance in which the Commissioners have granted the privilege to any parties to turn their horses out in the commons? A. I have an indistinct recollection that permission was granted to a confined region, a confined limit, in a certain portion of the valley where there was perhaps a little pasture left, or something of that kind; for a limited time; that some right of that kind was extended, in a certain portion of the valley.

Q. Is that a portion of the valley that is visited by tourists? A. The valley itself is open to tourists to go where they please.

Q. Those horses were running (at such times as they were running loose) outside of the restriction; they were running on the ground of tourists? A. In some portions of the valley there was a privilege granted for a certain time, but not for a continuous season. It was a question of administration, which, temporary in its character, seemed to be necessary at the time, and the Commissioners acted upon their best judgment in granting that permission.

Q. It was suggested to me that I ask the question. It is in the nature of making a witness a witness against himself. If those parties did not exceed and go beyond the privilege which you say you granted to them? A. If they did go beyond the privilege granted to them, it was the duty of the Guardian to prevent it, and if he could not, to notify the Commissioners for them to prevent it.

Q. Did the Commissioners have any notification of that kind? A. No, sir; I would think that my knowledge of what is going on in the Commission, my opportunities of knowing are a little better, owing to the personal intimacy between myself and Mr. Truman, who is a member of the Commission and of the executive committee.

THE CHAIRMAN: There is a portion of the valley set apart for campers?

A. Yes, sir.

Q. Are Coffman & Kenney allowed to turn their stock on that? A. No. [The clerk read the sixth charge.] A. I deny that any such thing exists in the valley. I deny it. If there is any evidence of it I should be pleased to hear it; but that will answer, so far as I am concerned.

MR. TULLY: Your answer to that is an unqualified denial? A. A denial. I deny that there is anything done for private individuals in the valley.

MR. HOOK: In any particular? A. In any particular. There has been nothing done in the interest of any individual since I have been on that Board, and I stand here to challenge any charge of that kind—that there has been any favoritism. No man living will charge me, at least, with having shown any favoritism toward any man or any set of men or any corporation that has to do with that valley.

Q. That is rather a broad assertion. He may charge you? A. No, he won't. I deny that there will be anybody come to me and say to me that I have been guilty of that.

MR. ROBINSON: The charge is not made against you, but against the Commission as a body.

THE WITNESS: Mr. Robinson would not make that charge against me. I have been with the other Commissioners all the time. I know what they have done.

[The clerk read the seventh charge.] A. The reading of these charges was the first knowledge I have ever had as a Commissioner that any charges were—

MR. ROBINSON: It does not state that.

A. None ever came to my knowledge, as a Commissioner, of any kind against Mr. Dennison. I have heard rumors against Mr. Dennison. You can hear more rumors—those people are very much dissatisfied with each other; the privilege holders are exceedingly jealous of each other, and I never went into the valley in the world that I was not assailed with a large number of complaints. If the testimony of the people who reside in the valley were taken concerning each other, and it was all true—

MR. CRAWFORD: The Commissioners could receive no salary? A. No; they get a partial reimbursement.

Q. Does Mr. Truman receive any salary? A. Mr. Truman receives money for certain expenses of the office.

Q. He receives no salary outside of that? A. No.

Q. He receives no compensation as Commissioner? A. He receives no compensation as Commissioner.

MR. TULLOCH: Merely for his services? A. The nature of the allowance to the Secretary is an allowance for office rent, for postage, for the revolving fund, for expressage, and for incidental expenses of his office, and he is allowed to bring that within a certain amount. He is allowed a flat amount, and he must take care of it with that amount.

Q. What is the amount? A. One hundred and twenty-five dollars a month. The office of Secretary is indispensable to the proper conduct of this business.

MR. HOOK: Does it take up a good deal of his time? A. Yes, sir.

Q. Do you think the compensation is sufficient? A. No, sir; I do not. I think, gentlemen of the committee, upon that one question—you will pardon me now for making that remark. My experience upon this Commission proves to me that the public service would be very greatly benefited by compensation to the Secretary and bookkeeper, who would keep these accounts properly. The State will lose money always by bad account-

ing; and whenever we have had difficulty, whenever we have been embarrassed in the administration of affairs, it has always been traceable to the incompetency of the Secretary; to his neglect of duty. There is an amount of duty devolving upon him in the conduct of this matter that no man living can afford to discharge free. So my judgment is that the whole management would be much more efficient if a Secretary were employed and given due compensation. I am employing myself a large number of men, and have been an employer of men since I was twenty years of age, and I therefore state from a very broad experience as an employer, that a compensation which will make a man discharge his duty faithfully, would be directly in the public interest. It would be economical to the State. We ought to have a very efficient Secretary, and he ought to be paid an adequate salary. The public service demands that.

MR. TULLY: Do the Commissioners have the right of appointing, outside of their own body, a Secretary, and if so, would it not be the better policy to appoint, outside of their own body, a competent expert or a gentleman who would be able to manage those books and do all the clerical part of the business relating to the management of the valley, either for the present salary or an increased salary? A. I would be in favor of that myself. I have always been an advocate for having a Secretary, and having him paid, earnestly desiring to discharge my duty as a Commissioner; and as there is no compensation to the Commissioners, I have always been in favor of having the Secretary's books well kept, and the accounting well done, and the rents collected properly. We lose money by not having the rents properly accounted for, and I have been in favor of employing somebody on the outside, but it has been with very great difficulty that we could get money enough to do these things, and this has gradually grown from \$20 a month. I think that when Mr. Hutchings was Guardian Colonel Weller undertook to act for the Commission for \$20, just his room rent; Dr. Briggs I think acted as Secretary of the Commission for a long time for \$25, and we found that in both cases the books were not properly kept.

MR. TULLY: Under the resolution under which we are appointed, we are not only authorized to inquire into the management, but from the data we gather here to suggest some other plan. A. I am glad of that.

MR. HOOK: If the Secretary was remunerated sufficiently for the amount of work that he does, wouldn't the administration be more honestly carried on in this particular? All communications would have to be directed to the Secretary? A. Yes, sir.

Q. Suppose the Secretary would deceive the Commission and take a profit? A. The system would not admit of that. The system that we have inaugurated wouldn't at all admit of that. There are checks and balances. There are eleven checks upon every dollar that is paid out. There are eleven ways of tracing up expenditures for every dollar that is paid out.

MR. TRUMAN: It is an utter impossibility for a dollar to go wrong.

MR. TULLY: Without the connivance of the Commission.

MR. MILLS: Without we get our dividend.

[The clerk read the eighth charge.] A. I don't understand the nature of this charge. They are rather obscure in their statements. Mr. Robinson paints a beautiful picture, but his use of English, I must confess is sometimes very obscure. If you will read that again I will try to bring my intellect to bear upon it.

[The clerk again read the eighth charge.] A. That assumes that somebody has been trying to get all the privileges in the valley. I have never heard of such a case. That word "other" could prove an alibi in any Court of grammar in the world.

MR. TULLY: Strike out the word "other" and see how it would read.

THE WITNESS: Read it without the extraordinary word there.

[The clerk read the portion of the charge referred to, as follows: "And to eject residents, and debar the general public from just and legal use of the valley."] A. That is an assemblage of words that actually constitutes a sentence.

Q. Answer that question. A. I can't exactly comprehend what is meant by the Commissioner's connivance; conniving at somebody's trying to get all the privileges of the valley. Since no such encroachment has been made, to my knowledge, I will say no. I will answer this question by a general denial. No. That will satisfy me completely.

[The clerk read the ninth charge.] A. I am going to plead guilty to one part of that, and throw myself on the mercy of this legislative committee. I am Chairman of the committee which ought to have this matter in charge. One year when I was in the valley, two years ago, I think it was—and I think perhaps this has reference to that circumstance of two years ago. This is the only one that I have ever known of, and I didn't prosecute the fellow, and I am going to tell you why. There was a gentleman not unknown to many of you, by the name of C. C. O'Donnell, went into the valley with a paintpot and wrote the name of C. C. O'Donnell from Cloud's Rest down, by Bridal Veil Fall, to the Cascades; and yet there is a law in the State against murdering C. C. O'Donnell. I was the Chairman, who ought to have prosecuted him. My reason for not doing it was that Dr. O'Donnell's object in painting the rocks was to acquire notoriety. His object would have been more completely accomplished by the prosecution, and as Chairman of the committee I decided not to prosecute him. That was my reason for not prosecuting Dr. O'Donnell. We however sent another painter around with a paint brush and some lye, and we washed Dr. O'Donnell off of the sublime scenery.

Q. Was washing it out an improvement on the "C. C. O'Donnell?" A. It improved the rocks, because the association of Dr. O'Donnell with the scenery there was very offensive to anything like esthetic tastes. That is only my opinion. Dr. O'Donnell is a very eminent gentleman and has my regard.

MR. ROBINSON: Don't you think it blackened the character of the rock? A. I don't know whether the obliteration of the name or the black paint that was over it was the darkest. That is all the instance I know of, and I plead guilty to the neglect of not prosecuting Dr. O'Donnell.

[The clerk read the tenth charge.] A. This is a charge to which I enter a general denial. I asked Mr. Robinson to-night the deep and esoteric meaning of that question, and he said that at one time we held a meeting in the chapel in the valley, and that we excluded the public; that the doors were locked.

Q. Was that a private meeting? A. It was a meeting relating to privileges. Now and then there are questions that arise concerning the granting of privileges, and they are questions of a very delicate nature; and in order to reduce the harsh feeling which exists in the valley by the privilege holders to its minimum—statements are sometimes made that would result in neighborhood feuds, and quarrels, and disagreeable troubles; and I think that once, in the old chapel—the chapel that was built by the American Sunday School Union—we did hold a private meeting, but whether the law forbade that—a recent meeting of the Legislature forbade executive sessions of public Boards—but whether this occurred before or after the passage of that law I could not tell you. Mr. Hutchings was the man who locked the door.

Mr. HUTCHINGS: It was in 1885. A. Then it was before the passage of the law. I remember distinctly this; that as soon as the attention of the Commission was called to the fact that a law existed prohibiting executive sessions of public Boards, that no executive session was held. As soon as my attention was called to it I opposed granting any such privilege.

[The clerk read the eleventh charge.] A. We did not allow it, that is all. I want to say, on behalf of Carle, Croly & Abernethy, who are reputable gentlemen and friends, that before the Senate Committee, last night, I facetiously remarked that they stole the timber. That grew out of the fact that I have charge of a vast timber region upon which depredations are committed; it was said in pleasantry. I don't mean to say that they stole the timber. I don't know how they obtained the title. I know that most of the titles to timber lands are fraudulent; but they didn't cut any timber inside of the grant.

[The clerk read the twelfth charge.] A. Upon the question of exclusive privileges I wish to say that the privileges, while not exclusive, are single. This grew up in this way: Suppose the law said that no exclusive privilege should be granted. The inference of the law would be that more than one should be granted. The Commission proceeded upon the theory of granting three or four persons a privilege. Those persons used the privilege granted to them for the purpose of blackmailing those who were in earnest. A man would apply to us for privileges, intending only to make the men who intended to use the privilege in good faith pay them. The first meeting I attended in the valley, a gentleman came before the Commission, representing the saddle-train privilege. He said: "Gentlemen of the Commission, we don't pay the State anything for this property, but we pay to an individual \$800 a year not to run a train in here in competition with us." Now, here was an instance where an individual was getting \$800 a year out of the exercise of a privilege in that valley, and the State getting nothing. I made the motion myself, and shall respect myself for it always, whatever the law may be, that protected those people against that species of outrage. I am willing to stand on that record, whatever the law on the subject may be.

Q. I understand from your answer, Mr. Mills, that there are privileges granted? A. There are privileges; for instance—

Q. Not an exclusive privilege in the sense of being confined to one individual? A. For instance, a man wants to run a butcher shop; he comes and says he wants to run it. We tell him, "You must sell meat at the price we fix. We regulate the prices of commodities. Now, do you want to exercise this privilege?" and he says, "Yes, I do." Then we grant him the privilege, and he pays the State of California so much money for it. Now, another man comes and says, "I want a privilege to butcher in the valley." And we vote "No" on that proposition.

Mr. Hook: You allow quite a number to bid for this privilege? A. We will take the most that we can get for it, because we regulate the price; but as it was before—the first instance that I remember concerning the butchers' privilege was—I saw by the books that three men were entitled to butcher in the valley; that the price of meat was extortionate, and I inquired why; why didn't competition do something with this? And the butcher came before us and testified that he had to pay the other men to get out of the valley; and whenever more than one privilege is granted it is used in that way. Carriage privileges are granted. I have known three or four men to hold carriage privileges in there, and never run a carriage; and I found that they were sharing the profits. Before we regulated the price everything was costly, and it was a wise and salutary measure to

grant but one privilege, and when that privilege was granted regulate the price. It was good administration to do that, law or no law. That is my position. If we violated the law, the law was more honored in the breach than in the observance.

Q. You granted single privileges? A. We granted single privileges. After we found a man who would do the right thing, and would pay the most for the privilege, we declined to grant other privileges. We didn't say to him it was exclusive, but as we had a right to vote yes or no, we had a right to vote no.

Q. It operated as an exclusive privilege? A. Yes, sir; it operated as an exclusive privilege. I admit that.

Q. And it was in violation of law? A. If the law is read together you will discover that it is within the province of the Commission to manage that valley for the best interests of the country, and since all law must be read together—

MR. TULLY: Those are conclusions of law. We are simply here to investigate the facts.

MR. TULLOCH: The application of these single privileges was, in their nature analogous to exclusive privileges? A. They were analogous to exclusion.

Q. Were they not identical? A. They operated to be—an instrument is known by its effect. If an instrument has the effect of a mortgage, it is a mortgage, and will be so construed. To be candid with you, the actual effect of this policy results in exclusion.

[The clerk read the thirteenth charge.] A. I know of one instance. The gentleman who signs this charge was paying \$20 a month for a privilege there, and it was reduced to \$1.

MR. ROBINSON: I beg your pardon; that is not the charge meant. A. Of course it was not. You would not introduce the fact that we reduced your rent from \$20 to \$1.

MR. ROBINSON: You had better explain why. A. I voted for it.

MR. ROBINSON: What was the reason you voted for it? A. Because I thought you were paying too much.

MR. TULLY: Do you know of any other case? A. Well, I know of cases where rents have been reduced, and other cases where they have been raised. It was only a rent of \$20, and we let you have it for \$1.

MR. ROBINSON: I would like to ask the committee if they will allow me the privilege of questioning Mr. Mills in regard to that matter, providing Mr. Mills will submit to it?

THE WITNESS: I will submit to any examination here. I am under oath and before these gentlemen, and I do not trifle with my oath.

Q. Isn't it a fact that the Board rented to Coffman & Kenney their farm that they occupy now for \$500? A. Yes, sir.

Q. Isn't it a fact that the house burned down on that farm about a year ago? A. I believe it did.

Q. Didn't they ask, in the last June meeting, to have their rent reduced from \$500 to \$250 on account of the loss they had sustained? A. Yes, sir.

Q. Wasn't it granted to them for 1888? A. Yes, sir.

Q. Didn't they immediately put in another application, and was it granted, to reduce their rent for 1889 to \$250? A. Yes, sir.

Q. Wasn't that granted? A. Yes, sir.

MR. HOOK: Why was that granted? On account of losing the house? A. On account of the reduction of the value. Now, this is a notable case. It is one that has been criticised very greatly, and if I was so disposed now,

I could separate myself out from the other members of the Commission, because I opposed this matter very bitterly; most bitterly.

MR. ROBINSON: Allow me to state that I have no personal charge against you. A. And I used almost uncomplimentary language concerning it. I thought it was wrong; in other words, my judgment as to the value of the privilege, after the houses were burned, differed from the majority of my associates. They had a right to their judgment, and they exercised their judgment. I believed that privilege was still worth \$500, and I so contended before the Board; but the judgment of the Board was that it was not worth \$500, but it was worth \$250, and I do not for a moment, and did not then impeach the good intention of the members of the Board. As a question of policy I differed with the majority. They have differed with me many times.

MR. TULLY: Upon what facts did they predicate their opinion that the value had been reduced, if you know? A. There was a sense in which they were merging the Coffman & Kenney privileges—for there are more than one granted—to the saddle train, and the aggregate amount paid by Coffman & Kenney was quite large; and after the loss of that house, and upon information given to the Commission that there was very little profit in the farm—that is, the Royal Arch farm, that we had so much trouble about—the judgment of the Commission seemed to be that it was not equitable to charge them \$500 a year; that \$250 was enough, and I think when the privilege was renewed for the next year—that is, if they leased the farm for the next year—it was \$300 a year, but I don't remember distinctly. I opposed both motions, upon my judgment that the privileges were worth more.

MR. ROBINSON: Couldn't you get more? A. I think we could.

MR. HOOK: What did they use the house for? A. They had their farmer reside there—the man who cultivated their land; and they had stables where the horses were kept. At the time Harris occupied it, he raised potatoes, and had chickens and eggs and things of that sort, and sold them to the campers. When Coffman & Kenney got the privilege they could not do that; they couldn't make the money out of it that Harris had made out of it, and as Harris had gone from the valley, the privilege had really been reduced by reason of the different use to which the land had been put. My opposition to that grew out of a question of judgment.

Q. Did he have to pay for any other rent? Did he have to get any other dwellings? A. We have rebuilt. We took some of that old material from the hotels, and rebuilt some of the dwellings and the barn.

Q. Then the only change was that he was burned out? A. Yes, sir. And we charged rent for the new buildings. What rent, Major, is charged?

MR. TRUMAN: They have not put in an application yet. They have taken possession, but have not put in an application for this year.

MR. MILLS: The executive committee informed me, when they informed me that the buildings had been built, that they were going to raise the rent.

MR. ROBINSON: What is the size of the buildings? A. I don't know. I have not been in the valley since they were built. They will charge an adequate rent for the barns and houses.

[The clerk read the fourteenth charge.] A. Well, there was never anything of that kind done. If this Commission has a clear record on any subject in the world, it has been the liberal and generous manner in which they have treated the laborers. The champion of the labor element on that Commission has been Senator Goucher; he has been faithful, and frequently I have voted for measures suggested by Mr. Goucher, simply because I felt perfectly sure that his interest in the subject would be a very

safe guide for me, and I have not given the subject the attention I would have done, if it had not been for the continued activity of Senator Goucher in the matter.

MR. HOOK: Does the Commission work under the eight-hour law? A. Yes, sir; the Commission requires ten hours work, but pays for overwork. That comes from the fact that accommodations for the working men are not numerous. If it takes a larger number of men to do that work at eight hours, accommodation must be found for them. So the Commission requires that ten hours' work must be done, but the person doing it shall receive extra compensation.

Q. Do they get it? A. Yes, sir.

Q. What are the wages paid to the laboring men? A. \$65 a month.

Q. And board? A. No; they board themselves. They pay as high wages as are paid anywhere in the country.

Q. And overtime so much an hour? A. Yes, sir; they work by the hour. If a man works seven hours, he gets seven hours pay; if ten hours, he gets ten hours pay.

Q. The reason they work them ten hours is on account of board?

MR. TULLY: It is on account of the scarcity of help, I understand. A. We can't get men to go in there. The season is very short in the valley, and a man must go in there—he must pay his way to go in and to get out. Now, the season opens in May, or very late in April—some years not until May—and the season will close early in the fall. The result is, that it is a short season. It is not a desirable place. We have difficulty in getting enough men to do the work. We require of those who do go that they shall work ten hours a day. The accommodations for a few men are more accessible than for many. It is much more desirable that we should have as few tenements as possible. We are trying to reduce the number of tenements in the valley to its minimum, and every exertion is made in that direction, so that there won't be a number of buildings.

Q. I understand that there are some Chinamen employed. Have the Commission anything to do with that? A. No. Senator Goucher would take care of that. No Commissioner would dare, in his presence, to suggest the idea of employing a Chinaman. There are Chinamen used for laundry purposes.

[The clerk read the fifteenth charge.] A. I have no idea what the charge means at all.

[The clerk read the sixteenth charge.] A. I don't know that there was any illegality, any irregularity, or any bad management of any kind connected with the leasing of that hotel; and I say to you here, that its construction was more safely guarded than the action of any Commission that has ever existed in California. We took the precaution to prevent any private right opening out of the building of that hotel; and before we opened a bid we made a man make an assignment of all claim of indemnity against the State if he lost money in the building of the hotel. The result was, we built the hotel within the appropriation, and it was the first work ever done in the State within the actual appropriation. The hotel was accepted by—the acceptance was largely under the direct management of the Governor of the State. He visited the valley.

MR. TRUMAN: I think so. I was not on the Commission. General Stoneman—

THE WITNESS: No, it was Governor Bartlett. There has never been any report made to the Commission which would indicate to me what this charge means.

MR. ROBINSON: Will you allow me to explain? A. I would be pleased to.

MR. ROBINSON: Most of the residents in the valley, at the time that the Governor was in the valley and accepted that hotel, went up to view the hotel at the same time that the Governor and Mr. Griffith, and Mr. Madden, and Mr. Chapman were there.

THE WITNESS: Governor Waterman?

MR. ROBINSON: Yes, sir. I was commissioned by the "Examiner" to take a report in regard to the acceptance of that hotel. J. M. Griffith saw me in the hotel taking notes; he whispered in the Governor's ear, and immediately the Governor came and says: "Gentlemen, this is not a public affair, but a private affair, and I request you all to leave the house." And we were all put outside of the house, and nobody ever knew the conditions under which that hotel was accepted by the Governor of the State.

THE WITNESS: I answer so far as my knowledge is concerned. I was not a party to any such transaction. I know nothing about that. All I know is, that all the actions of the committee were reported to the Board and acted upon in regular session.

[The clerk read the seventeenth charge.] A. I know nothing of that charge at all. I don't know what it refers to, and don't believe it occurred. That is simply a question of belief. If it did, I never heard anything of it. No such complaint ever came to the Commission, and we never had cognizance of any such complaint. It is an inconsiderate matter anyhow, probably, but I deny any knowledge of it, and also am disposed to say, in defense of the Commission, that it will not be sustained.

[The clerk read the eighteenth charge.] A. This refers to the renewal of the lease, does it not, to the stage company? The stage companies who built the stage roads into the valley claimed indemnity from the State for the construction of these roads, in pursuance of the policy which is universal on the part of all the people to acquire private right in the valley. The Legislature passed a bill allowing one of the companies \$3,000 and the other \$6,000; that is my recollection of the amount. The Controller refused to draw his warrant in favor of the company which was allowed \$3,000. In the meantime, however, the Governor of the State of California vetoed the bill allowing the other company \$6,000. That was the Yosemite Turnpike Company. He asked my advice on the subject and I advised him to veto the bill. I am making no concealment of anything.

MR. GOUCHER: He didn't veto it, but let it die. A. He put it in his pocket. He asked my advice, and I asked him to do that thing. When the matter came before the Board at the last session, a motion was made to grant the stage companies a renewal of their privilege. That had been done before—a renewal of the lease, with the right to charge toll—not with any expectation that they would charge toll, but with the purpose, evidently, of putting them in such relation that they would have a standing before somebody for indemnity for loss incurred in the construction of those roads. In the case that Dr. McLean cited here to-night, his lease was renewed for the reason that there was some equity in his case, and that the State ought to recognize that equity; and the lease was renewed and the privilege of exercising the right to collect toll. I don't think the doctor ever collected a dollar toll under the privilege, but the privilege was given him to collect toll for the use of that end of the road.

Q. Do you know of any instance in which toll was collected within the limits of the grant? A. An instance was reported at the last session of the Board, where an individual running a stage line over this road—that is, carrying passengers for hire—was charged toll on the road. The Yosemite Stage and Turnpike Company were repairing the road at their own expense, and were carrying passengers in over the roads, but not charging

anybody toll on that part of the road where it invades the grant. A man carried passengers for hire, when the Yosemite Stage and Turnpike Company didn't think it fair that they should keep up a road for somebody else's use as a common carrier, and they made a charge, which we made them pay back. The Commissioners made them pay, and they paid the money to the Secretary, and the Secretary forwarded it to the gentleman who made the complaint.

Q. Is it a fact now that any person can go into the Yosemite Valley without paying toll? A. Yes, sir; no toll is charged. The right to collect it—the renewal of the lease—was made in order to give those gentlemen a hearing. That was the object. I say now that I opposed that measure personally, but I stand my share of the responsibility; but when Dr. McLean was testifying to-night I heard for the first time an argument which almost convinced me that perhaps he and some others had some equity. It was a better argument than the gentleman made at the last session. I opposed this very strongly, and declared that I didn't want it to pass.

Q. Did the Commissioners grant to this individual who collected the toll, or to any other parties, permission to collect toll within the limits of the grant, at any time? A. The Commission, since 1880, has addressed itself diligently to the question of extinguishing all the toll. In 1880, all the trails were toll trails; you couldn't cross a log scarcely, without having to pay somebody some toll. The trails are all now free. The only privilege existing to collect tolls in the valley relates to this renewal of the stage company's lease, and they are exercising a right which has been conferred upon them, but they are to have something to give them a standing and a hearing in the Court that they claim to have a right to be heard in—before the people of the State of California.

Q. Have any people collected toll within the grant since the rights were extinguished? A. No; not since the trails were declared free or purchased. Some declared free without purchase.

[The clerk read the nineteenth charge.] A. This is another very occult question. I don't know of any monopoly privileges of any kind. I know that there is a great deal of jealousy between stage companies. I know that privilege holders who were successful in their bids think well of the Commission, and those who were unsuccessful think very ill of the Commission. I know that there has been some charge that some stage company holds special privileges there, but I have never been able to discover any favoritism of any kind. If favoritism existed in that valley, the only way in the world to make it effective would be to instruct the Guardian to see to it that certain people had favors which were withheld from others. Now the Commission has had Mr. Hutchings and Mark L. McCord and E. L. Dennison as Guardians of the valley. They can all be brought before this committee and testify as to whether they have received instruction to show any favor to anybody, and that will settle this question absolutely.

MR. RUNDALL: You know of no case where a family has been evicted? A. I know of no case of eviction in the valley, in the sense that anybody has been evicted. The policy of the Commission is not to allow people to reside in the valley who have no visible means of support. It is undesirable to grow up a community of residents there unless those residents are related in some manner to the administration of the valley or indispensable to the privileges held there. If any evictions have occurred, I know nothing of them at all myself. The other members of the Commission may be better acquainted with the facts.

[The clerk read the twentieth charge.] A. This is not true. This charge could not be sustained by an actual examination of the case. There

are thirty-six miles of magnificent road in the valley; every part of the valley is accessible except that which is under fence, and nobody is jealous of the privilege of getting on that particular spot, because there are myriads of others equal in beauty and value to that. The roads are in splendid condition. The trails are in good condition; just as good condition as they have ever been in; and as proof of that I assert to you to-night that there has never been an accident upon the trails in Yosemite that constituted really a serious accident. I was pleased in reading Mr. Hutchings' report of 1883 and 1884, to learn that notwithstanding the length of time those trails have been in use, their precipitous character, their tortuous course, that no accident has occurred on them. The trails are in good condition, so far as I know.

[The clerk read the twenty-first charge.] A. If anything of that kind has occurred it was very bad.

MR. TULLY: Have you any knowledge? A. No; I have no knowledge of it. It would not be allowed a moment by the Commission. What advantage would it be to the Commission to allow some fellow in there to employ State labor on his private grounds?

MR. ROBINSON: Was there State labor employed around Cook's hotel this summer? A. I don't know.

Q. All the time? A. I don't know anything about it.

MR. ROBINSON: I know. A. You are competent to testify to that; and the Commission should have been apprised right at once, because they would have put a stop to it at once.

[The clerk read the twenty-second charge.] A. In answer to this question, gentlemen of the committee, I beg leave to say, I have been associated with many public men in various public works in life. I have been a member of Boards of Commissions managing private asylums and institutions. I believe I have never seen a body of men who appeared to me to be so really anxious to discharge their duties faithfully and conscientiously as my associates on this Board. As to myself, I have just this to say, that I have done the best I knew. There is nothing in the Constitution of the State, of which I am a citizen, which forbids me from having bad judgment. I may not have had the best judgment, but it was the only one I had. I have exercised it for the best interests of the State, as I understood it. I am not in the slightest degree solicitous as to what shall be done with this investigation or what conclusions the committee shall reach.

MR. TULLOCH: Do not the duties of the Commission include clerical work and secretarial work? A. Yes, sir; that is, it must be done for them. In the administration of the valley a great deal of clerical work is necessary.

Q. Are not those two departments part and parcel of the duties of the Commissioners? A. Yes, sir; I should construe it to be the case.

Q. Well, that being the case, and they being entitled to no compensation, how do you account for the fact that Mr. May, some time ago, received \$2,000 as a salary for clerical or secretarial work? A. I am not aware that Dr. May was paid \$2,000 for clerical work.

Q. He received that. A. When did he receive it?

Q. I am not aware; I don't know it as a fact. Did he not? A. I don't know; I am not cognizant of it if he did. Did Dr. May receive \$2,000 for clerical work?

MR. TRUMAN: It could not be possible.

MR. ROBINSON: It is in the statutes of 1886-87; it refers to the amount of money paid out in the interest of Yosemite Valley. I find \$2,000 appro-

apropriated for salary of Secretary and Treasurer of the Yosemite Board of Commissioners. A. By the Legislature?

Q. Yes, sir. A. What years?

Q. Eighteen hundred and eighty-six and eighty-seven.

MR. TRUMAN: Dr. May was Secretary part of the time, and Mr. Griffith was Secretary about a year.

THE WITNESS: If the State made such appropriation the effect would be to put the Secretary upon the civil list of officers of the State and entitle him to a salary, if the appropriation had been made. It is a matter I shall be pleased to inquire into. I don't remember that the Commission made such appropriation.

MR. TULLOCH: Have any of the Commissioners received any money as a salary for secretarial work? A. No; the allowance that was made was for the general expenses of the Secretary's office. A general allowance has been made, and the party discharging that duty disbursed that amount.

Q. What was the amount? A. \$125, Major Truman informs me.

MR. ROBINSON: Does the United States make that law? A. The Attorney-General.

Q. Does the United States law make that provision?

MR. TRUMAN: So far as the regulations are concerned, we are acting under the State law.

[Here further hearing was continued until to-morrow, Wednesday evening, February sixth.]

WEDNESDAY EVENING, February 6, 1889.

Present: Hon. Wm. M. Rundell, Chairman; E. C. Tully, L. R. Tulloch, John Gardner, Henry Hook, and Henry C. Dibble.

B. C. TRUMAN.

Being sworn by the Chairman, testified as follows:

MR. TULLY: Where do you reside, Mr. Truman? Answer—San Francisco.

Q. You are a member of this Yosemite Commission? A. Yes, sir; I am a Commissioner and a member of the executive committee.

Q. Are you acquainted with the nature of these charges about which you are summoned here to testify? A. Well, I have heard them read several times.

Q. It is not necessary to read the preamble; we will simply commence with the charges? A. To facilitate, I have been studying them up—reading them to-day, and put down my answers.

[The clerk read the first charge.] A. This is not true, so far as I can go back with my connection with the Commission. Nothing, however, could make me believe that the Commission would be guilty of such gross perfidy and outrageous conduct. I will say right here that I was appointed and went up to the annual meeting in June. I have only been on the Commission a few months, and as I understand, although the present Commission is on the defense—

Q. You are being investigated? A. It is being investigated for all preceding Commissions. There has nobody been on the Commission more

than four or five years, but we are answering for the whole twenty years. But I thought I would say, as I was a pretty new member, that I had only been on the Commission six months, but I have been in the Yosemite Valley many times.

Q. Since you have been connected with this Commission has anything come within your knowledge tending to substantiate that charge? A. Nothing at all; no, sir, nothing whatever.

Q. To your knowledge or observation? A. No, sir.

Q. I will ask you right here—you stated, however, in your first answer what time you referred to? A. Yes, sir; I thought I would say that, so as not to say it over again. You will consider, where I say anything since my connection, that it is only six months, or several months.

[The clerk read the second charge.] A. No such thing has occurred since my connection with the Commission.

Q. You may please state whether anything has come within your knowledge, or under your observation, bearing upon that charge, although it may have antedated your connection with the Commission? A. No. The only reason I didn't volunteer to say that was because maybe you would prefer not to have my belief or opinion.

Q. I am not asking for your opinion, but anything that came within your knowledge, upon which you can predicate anything like reliable data, upon which you might predicate an opinion, because you are entitled to an opinion from what you see? A. I think I fully understand you.

[The clerk read the third charge.] A. This charge is false.

[The clerk read the fourth charge.] A. There has been judicious cutting of trees, but no destruction of timber as implied.

Q. What do you refer to as judicious destruction? A. I don't say judicious destruction; I say judicious cutting.

Q. What are we to understand by judicious cutting of trees? A. I understand that judicious cutting is cutting—the only trees I have had anything to do with cutting was permission to cut some trees near the new stable that was being built, so that they would not fall, or would not in any way be blown down on the stables. I understand that there have been trees cut in order to afford vistas, and underbrush has been cut, and while I don't want to bring it up this evening, as it will come in some other time, they have been governed a good deal by William Ham. Hall's report, who was sent into the valley two years ago, and instructed the Commissioners or suggested that they cut timber here and there; and he went over the whole thing, poetically and otherwise, and said that it should be the duty of the Commissioners to use the axe freely; but they have not done that; they have not used it freely. Now, to go ahead a little further in answer to what you said, they have cut down trees around near the road. They showed me some trees, and they cut down some trees and made a road to a bridge, in order that people may walk to Mirror Lake instead of paying a dollar to ride there, and such things as that.

MR. TULLOCH: What would you judge would be the number of trees altogether that have been cut in the valley, as far as you have any knowledge? A. Well, I think very few; but I will say that the Guardian knows exactly. He will be before both committees, and you will remember, but I will mention it to you myself, that I would not know that; but I think very few, because they have been very careful. The Commission is rather cranky upon the cutting of trees, and they know that people generally don't believe in cutting trees. That is one of the things that people feel uneasy about, is the cutting of trees in the valley; although, if I was going

to be a Commissioner much longer, there are a good many more trees that I would cut. But then, you don't care for that. You don't ask that.

MR. TULLY: You say Mr. Hall, the State Engineer, suggested cutting trees? A. Yes, sir.

Q. Do you consider Mr. Hall good authority on questions of that kind? A. He is the State Engineer, that is all that I know. He published a book. He has been the State Engineer many years.

Q. Are you acquainted with Mr. Olmstead? A. Yes, sir.

Q. Do you think Mr. Hall is better authority than Mr. Olmstead? A. No; I think Mr. Olmstead is one of the best in the country; but Mr. Olmstead told me in San Francisco, himself—I will volunteer the statement—that he had read the article in the "Examiner," and he was afraid they had been cutting too many trees there; but he said that it, like all other parks, ought to be thinned out and not have too many trees. He remarked that to me, I think in the presence of Mr. Burke.

MR. TULLOCH: Why, in that matter, did the Commissioners take the report of a man of science, and not follow out their own artistic designs in the matter? Why did they take the suggestion of Mr. Hall in the matter, who is evidently a man of science, in contravention to their own ideas of art? A. I suppose they wanted to be fortified. I think an aggregation of wisdom is better than a little wisdom. That is what I understand. I don't say that they have wholly gone under his instructions. I don't know that they were exactly instructions. I think I make no mistake though, in citing a man who makes that his study for years, and is State Engineer, and sent to the Yosemite to look after those things and report fully on them. That is the reason I quoted him.

Q. Why ought the suggestions of Mr. Hall to be taken in preference to those of a landscape gardener from London, or from anywhere else? A. I would be governed a good deal by my own opinion, associated with his. I might prefer Mr. Hall's opinion more than I would that of the landscape man from London, or vice versa. I would exercise my own judgment a good deal and my brother Commissioners. I have not assisted in cutting down any trees yet. I think there are too many trees in the valley, though. I will say that.

Q. Do you think that geometry and higher mathematics have anything to do with the beauty and grandeur and romance of Yosemite Valley? A. Well, I suppose there are some members of the Commission selected maybe because they have a general idea of those things. I am not high up in geometry or mathematics. I have stood pretty well in a literary and in an executive way in many things, but I don't think that I could answer that question to your satisfaction. I don't want to blunder.

MR. TULLY: You don't want to appear as a pupil of Euclid in mathematics? A. No, sir; I do not. I want to be frank and true and not sarcastic, but I am not lofty enough in geometry or mathematics to answer the question. I have got a pretty good idea, pretty good taste; have been in every portion of the world; in Switzerland—

Q. Do you think an engineer more capable to judge of the beauty of that place, or that his judgment should be superior to that of an artist, or a landscape gardener for instance? A. A man who was a general landscape gardener I would think knew more than a man who was only an engineer and surveyor. I have never met Ham. Hall, but I have read his report, and it is simply beautiful, and very argumentative. It is a splendid report. I don't know how much he knows, though, or how little. I would take them all in, though, Mr. Tulloch, if I had an opportunity.

[The clerk read the fifth charge.] A. Burning shrubbery, clearing and

plowing and other work of a light character has been carried on more or less for the purposes of preservation and improvement, but not to impair the beauties of the valley; I do not believe such things have been done for the private gain of any one.

Q. Do you know whether they have been done or not? A. I don't know about the burning. I do know about the clearing and cutting, for I have seen that for myself. We did not burn. On account of the terrible condition of the grove we spent, I think, \$300 or \$400 in getting up some of this moss and underbrush that Mr. Mills spoke of, around some of the most beautiful trees there; but we put out fires there. There were a good many fires there last year, and we put them out. I have never seen anything that looked like that.

Q. You don't think the valley would have been likely to have been burned up at any time, providing a fire should have started? You don't think the valley was in a condition to be burned up very rapidly if a fire should have started, do you? A. Unless it was very dry and there was a very great wind. I should think that valley stood in as good a site not to be burned as any place.

Q. The ground as a general thing is rather damp, is it not? A. Well, generally, when I have been there; I have been there in April, or May, or June; but this year I was there in August, and it was getting pretty dry then; but it looked pretty green in the valley. It was dry generally.

[The clerk read the sixth charge.] A. I do not know of any such thing, and do not believe it at all.

MR. TULLY: The first proposition is, if you know of any fencing, and the next is, if you know of farming out? It is a double question. A. It says: "Fencing and farming for the use of private individuals." I don't know of any such thing.

MR. TULLOCH: For the use of anybody, whether private individuals or public? Do you know of any fencing of public lands or farming out of them? A. Yes; I know that there is farming and fencing carried on, according to our books; it is under lease, all of it; not for private individuals.

Q. Who are the parties leasing? A. I think Coffman & Kenney. I am not quite familiar enough to call the rest. They were answered fully last night those questions. Not but what I would answer them if I could. I don't know. The books show, though.

Q. You have got the books here? A. Yes, sir.

MR. TULLY: Are not those parties to whom you have referred private individuals? A. Well, I want to answer that satisfactorily. I don't know. These people pay the Commissioners rent. I don't know what you call them. If they are private, everything is private. I mean to say they are under our control. I should judge by the question that it was framed —

Q. I understand they are the lessors of the Commission? A. Yes, sir; they pay \$1,200, one of them. Now, as I understand that question, it implied that there was somebody behind that was getting this thing done privately; maybe not.

Q. Whether they are private and independent of any relation to the State? A. There is no such thing; no such thing.

Q. There is no person, within your knowledge, for whom that land has been fenced or who are farming it in their own interest without returning a rent to the State for it? A. No, sir; there is no such thing. I am positive of that.

Q. I apprehend as a matter of fact that there could not be any leasing

of those premises unless to private individuals or to the members of the Commission themselves? A. Why, of course.

THE CHAIRMAN: This land is leased to Coffman & Kenney? A. They have a portion of the land for \$1,200. Another man has something for \$100.

Q. Don't you consider those private individuals, Major? A. Well, I tried to explain that the best that I could. I am trying to be awfully frank and honest about it. They are all private, then. Everything is private—the blacksmith, and the grocer, and everybody.

MR. ROBINSON: That is what is intended? A. Yes, sir.

MR. TULLOCH: Are they exclusive privileges? A. That question will be answered pretty quick. I will answer it now if you want me to. I should answer it as Mr. Mills did last night.

Q. Who are Coffman & Kenney, and what do they do there? What is their business there? A. They own the saddle-train, and they rent a farm.

Q. Of the Commissioners? A. Of the Commissioners; yes, sir.

MR. TULLY: Do you know how many fields and how much land is under rent to those parties? A. I do not; no, I don't know positively.

Q. Can you approximate from your observation? A. No, I cannot; but the Guardian, when you get him, he will know everything to the square foot, you know, and every piece of rail; and I thought, if I could get off to-night, that I would have him come up to-morrow night, if you want him to; but he will be here in a week.

MR. TULLOCH: Do you know about how much land those parties farm; how much they have under cultivation? A. No, I do not; that would hardly come under my observation so quick as it would to an executive man.

Q. Don't you know whether there was a considerable quantity or not? A. Yes, sir; I have ridden all over it. I should say they had maybe thirty or forty acres. Now, I might have too much or too little. It was a big fine field of grain there when I was there in August, cocked up; it was in cocks then.

Q. Outside of and independently of this land which they have under cultivation, is the quantity of land which has been fenced considerable? A. I understand that there were about sixty acres of land separately fenced for camping purposes alone, and that there was a good deal of other land fenced.

Q. Outside of and independent of that which was fenced for the campers, how much land do you presume was fenced by these parties who had the privilege so to do; for instance, take Coffman & Kenney and other parties? A. That I don't know. I don't know as they have any or whether they have it all fenced. That you will get from the Guardian; but I know, from my going twenty or thirty miles in the valley, that there is nothing fenced that any of you would take exception to if you were in the valley; any gentleman—not a human being.

MR. TULLY: You assume that? A. Well, yes, I assume it, of course. I feel pretty sure; I know that there has been some fence built on account of the beautiful roads that have been laid out, and to keep cattle and horses and things out of the roads and off the bridges, and all that.

Q. Do you know if there are any walks laid off and prepared for pedestrians, or those who desire to stroll around on foot? A. I don't think there are any except the main roads—the bridal paths; no. I looked back on my minutes and saw that they were ordered, but the money ran out that year; half the money for that year; half of the appropriation; and then

this year the judgment of the Board and executive committee was to do something else. I don't know as it was ever strictly ordered by the Board; but the roads are in beautiful order this year.

Q. Are there no trails there? A. Yes, sir, hundreds of paths and trails.

Q. That is what he means?

MR. ROBINSON: No; that is not what is meant.

MR. TULLY: For foot passengers, how is it? A. Yes, sir; lots of places.

Q. I mean for pedestrians; people wanting to stroll around through the valley. I have no reference to bridle paths up the hills? A. There are lots of paths through the valley, but no walks laid out; no particular walks or anything like that.

Q. I mean paths prepared or opened with a view to giving pedestrians access to the different portions of the valley? A. They are natural. They have been worn and made by the pedestrians themselves. No money has been spent that way on them.

Q. You spoke, Mr. Truman, about a portion of the money that had been considered necessary to divert for some other purpose? A. Yes, sir; I think there has been for three or four years talk in the Board about making an order—everything goes at last to the executive committee; and if they deem it judicious to build a splendid walk—they used to be a board walk—I recollect that was eight or ten years ago—a board walk went up from Leidig's to Barnard's. This road had all been carried away by the water, and I think it is the intention of the Commission some day to make a stone walk, macadamized walk there; but they thought they had better open more new roads up around Mirror Lake and up in through there, and build a bridge, and so forth.

MR. TULLOCH: Hasn't most of the appropriation money been spent in the neighborhood of the new hotels? A. I should think in that neighborhood and between the two hotels. The people now live around the two hotels. They have moved from the old place that I used to be familiar with, Black's, and down in through there, and the buildings are between the two hotels, most of them. The stables are up beyond the Stoneman House, even; one of the new stables. They have been ordered for years by every Board, but somehow or other they didn't build them, but they have been ordered unanimously every year, and we built them this year.

MR. TULLY: Is it or is it not true, Mr. Truman, that the greater portion, the most at least of the money that has been expended there has been expended in and around and about the new hotel, and above, in the direction of Mirror Lake, or in the direction of the farm? A. I think that it has; yes, sir; I think it has. The great multitude of people go to the Stoneman House. It is the beautiful house of the valley. In other words, twenty-four hundred people went there this summer. as against eight hundred at Barnard's, and about twelve hundred campers. That gives you an idea about the number of people and how they go. They all went to the Stoneman House that could. Board is the same at both hotels, except I think probably you could make terms for the week maybe a little cheaper at Barnard's. I only guess at that, I don't know it.

MR. TULLOCH: Were there twelve hundred campers, do you think? A. The Guardian reported to me in the neighborhood of eleven or twelve hundred campers; twenty-three hundred at the Stoneman House. That was up to a certain time. I met Mr. Mills in Los Angeles, and he said that even in October there were some sixty, I think. I think sixty-six people went in in October.

Q. How large a space, or about how large a quantity of land do you think they set apart for the campers to camp upon, and for their privileges?

A. I think sixty acres, but the Guardian will know to a foot; but ample, so he said.

Q. Was that a sufficient quantity for all those campers, do you think? A. I think so; I don't know that, though; I wouldn't know. I would take the judgment of any man that was in the valley on that, and especially the Guardian, he being the official man. There is a good deal of the valley—they didn't answer that question last night. There is seven thousand acres in the floor of the valley.

Q. Including the talus? A. Including the talus.

MR. ROBINSON: A little over three thousand acres of meadow? A. Three thousand acres of meadow land, that would come under that head, and a good deal of it would produce a good deal, because grasses grow there; flowers and aromatic shrubs, and bushes, and trees. I don't know much about the soil. There are some pretty peach and apple trees there, and they raise berries, and such things as that, and lots of wild strawberries, and raspberries, and thimbleberries.

THE CHAIRMAN: Not cultivated? A. No, sir; wild. I picked thimbleberries and blackberries, there last August; lots of them.

[The clerk read the seventh charge.] A. This charge antedates my appointment as Commissioner.

MR. TULLY: You know nothing of it of your own knowledge? A. No.

[The clerk read the eighth charge.] A. I am positive that no such thing has taken place. I believe the Commission incapable of such violation of their duties.

MR. TULLOCH: You simply believe; you don't know it to be a fact? A. No.

MR. TULLY: That is, you speak with reference to the time since you have been connected with the Board? A. Yes, sir; I am positive that no such thing has taken place, meaning, as I said before, while I have been there. I believe, however, the Commissioners incapable of such violation of their duties.

Q. Have you any knowledge of any such violation of laws? A. No, sir; none whatever.

Q. Which took place prior to your connection? A. No; I never heard anything in my life of any character, from any human being.

[The clerk read the ninth charge.] A. No artificial disfigurement or defacement has occurred since my connection with the Commission.

MR. TULLY: Do you know of any that occurred before you were associated with it? A. Only what Mr. Mills stated last night.

Q. That was in regard to C. C. O'Donnell? A. Yes, sir; that is the only one.

MR. TULLOCH: How do you regard that question; what is your conception of the term in relation to the word "disfigurement?" For instance, would fences running across the valley in different places disfigure the land, or the premises, or the scenery in any way, according to your idea? A. Well, not according to my taste. I have not observed any such thing as that, that pained me or repelled me, or that I noticed whatever. I expect, maybe now, if you sent me up there to look after the fences, I might see something that I disagreed with; maybe not; but it has not occurred; and not to attempt to be florid, everything is so grand and beautiful, and so attractive around there, that undoubtedly most people forget those little things. I mean, at least, the superficial visitor. The superficial observer, in looking at El Capitan or the Falls, would forget whether this fence was a whitewashed one or runs zig-zag, or was a wire fence, or anything else.

MR. ROBINSON: If he should run into a wire fence, wouldn't he remember it? A. I don't think you can run into it, with the great number of roads you have there now.

MR. TULLY: I will ask you whether you have observed any barbed wire fences or any other fences there? A. Yes, sir; and I have seen——

Q. From your observation of those fences and the character of those fences and their conditions, have you observed anything there that in your estimation marred the beauty of the valley, or operated as an obstacle to the free ingress and egress to such portions of the valley as a tourist or a person going there to visit it for pleasure would like to have access to? A. No, sir; because the roads run in almost every direction; but still a person, if they wanted to take a short cut, maybe, here and there, they would meet with a fence here and there in some places, as you would any place in the world, visiting any park, or any other public place. I didn't notice, I cannot call to my mind any fences, although I do remember seeing—that is, wooden fences—and not much of them, but I saw a barbed wire fence. I happened to come up against it once or twice myself.

Q. Have you ever visited Golden Gate Park? A. Yes, sir.

Q. Did you find any fences, or barbed wire, or plank fences there? A. No; but there are a multiplicity of signs which tell you to keep off of the grass, and there are no signs in the valley which tell you to keep off of the grass. I don't say that to be funny, only to answer.

Q. These fences that were constructed, were they laid out and constructed at the discretion of parties leasing the premises, or were they under the direction of the Commissioners? A. I have not the slightest knowledge of that; I don't know anything about that.

Q. Had they the right and privilege to place the fences wherever they elected? A. I don't know anything about it.

Q. You don't know whether they took the land up to suit themselves or not, and run their lines? A. They couldn't do that. We looked back on the old minutes and books—you have no idea how much red tape there is there. I guess they have to ask permission to do the least thing.

Q. They did it, then, with the thorough authority of the Commissioners? A. Undoubtedly. That I don't know. You will get that all from the Guardian.

[The clerk read the tenth charge.] A. Not since I have been a Commissioner.

MR. TULLY: Well, do you know, have you reason to believe that such things were done before you were a Commissioner? A. Only what I heard last night Mr. Mills admit, in the chapel there, that night, that one time; that is all I ever heard. I know everything is open; our books and our papers, everything to everybody that comes along, official or otherwise; I understand that to be the law, too.

[The clerk read the eleventh charge.] A. That is positively untrue.

MR. TULLY: Do you know of your own knowledge that that is not true: you state from your own knowledge? A. Yes, sir; although I was not there, I am positive about that, because I have heard all the Commissioners say so. It is from hearsay.

MR. TULLOCH: You heard what they said? You don't know of your own knowledge? A. I will take the chances on the other seven Commissioners. I will take the chances and say that it is absolutely untrue.

THE CHAIRMAN: There is no sawmill in the valley? A. No; never has been since I have known it. I have heard the old story about Hutchings having one, but I don't know anything about that.

[The clerk read the twelfth charge.] A. Single privileges have been

granted, because it has been deemed prudent to do so by the Commissioners, and decorum and honesty have been promoted thereby, and much dissension and possible blackmail avoided.

MR. TULLY: Would that not come under the head of being a special privilege, an exclusive privilege? A. I don't know. I hardly think so. I make a distinction between an exclusive privilege and a single privilege, and in making the distinction—

Q. The operation of these single privileges that you designate, is it or is it not true that the granting of those single privileges operates to a certain extent as an exclusive privilege; that is, that they result in the exclusion of others to an enjoyment of the same privileges? A. I should think so for that year. After the applications are put in it is an exclusive privilege for that one year; but we only give them for that one year, in order to keep a check and make them come to us every year with their applications; and then, as was pretty fully explained by Mr. Mills, not to fall back on him so often, but as was explained by him last night better than I could do it, the applications we will take from a hundred men, but at last we give it to one; for instance, one butcher, partly so that there won't be a lot of residents in the valley; lots of first class reasons that he presented.

Q. Is it or is it not true that the granting of that single privilege, as you designate it, operates to keep out—its effect is to keep out competition as between butchers? A. No, I don't think so, because they all put in applications, and then we single out the best one; but we don't give it to two.

Q. After you have made that selection? A. That lasts for the year.

Q. To the exclusion of any other who would like to enjoy the same privilege? A. Yes, sir. You know it would take an eternal lot of book-keeping and three or four men working all the time. We do this once a year, and they pay in advance, and the money is sent right to the Treasury here.

MR. TULLOCH: Mr. Tully's idea was this: Doesn't this very process of granting to but one an exclusive privilege have the purpose of raising the prices and creating a monopoly in that party? A. No, because we make the prices; we tell them what they shall charge for things.

Q. You have that power? A. Yes, sir; we have tremendous power in all such things as that.

Q. You spoke awhile ago about that system promoting honesty; that one of the reasons you did that was for the purpose of promoting honesty and a high system of commercial dealings? A. Yes, sir.

Q. In what sense does it promote honesty? A. It keeps one man from going in with another and making straw bids, as we used to call it in Washington in mail contracts. Now, Mr. Grant—that was in cross-examination that was brought out; he didn't state it until he was cross-examined. He really put in two bids, and the Commissioners saw it. He put in two bids, and when he saw that his two bids were the highest, he let one of them go and claimed the other. That is a straw bid; what we call straw bids.

Q. Are not the prices charged for the various articles, merchandise or whatever they may have, by these parties who have been granted exclusive privileges or single privileges, are they not greater, even as given by the Commissioners, than they would be if other parties were in there, and there was a competition? A. There is nothing done there where there is room for much more than one thing, to commence with. There are very few things that could live there two apiece; that is, two blacksmiths, maybe, couldn't live there—two of this, and two of that; but, as a general thing, to answer the question now, as well and promptly as I can, I took particu-

lar pains this summer to visit Niagara Falls and the Yellowstone. I stayed a long time; and the Yosemite Valley charges less for everything than they do at the Yellowstone, although the Yellowstone is only thirteen miles away from the railroad; board, and fruits, candy, and everything else.

Q. Do you recollect the prices at which Kenney & Coffinan sell hay?

A. No, I do not. Well, I could show by our books, because we buy hay from them sometimes, I think. I don't know that we do, but we buy hay there for our mules and horses. I don't know that. That the Guardian knows to a fraction—all those things. No, I don't know anything about that. I never went anywhere with a camping party. I have always been in the stage.

MR. TULLY: The question was whether the Commission fixed the prices which Kenney & Co. should put upon their hay?

MR. GOUCHER: May I be permitted to ask a question?

THE CHAIRMAN: Certainly.

MR. GOUCHER: Mr. Truman, is there any privilege granted to anybody to sell hay in the valley? A. I don't think there is.

Q. So far as the selling of hay is concerned? A. I think anybody can sell hay. I think Mr. Mills said last night that anybody could bring in hay. I think occasionally that a man comes in with a load of hay or barley. There is nobody with a privilege of that kind, and we will say now—that is, I am looking at it from the standpoint of maintaining business—if Coffinan & Kenney did raise a lot of hay, and they had any to sell, and were charging too high, a man could go in there with a load of hay, and if he sold cheaper, it would bring them down.

MR. TULLY: Nothing in your rules and regulations prohibiting others from having free access to the market of the valley with their hay? A. Nothing at all. In fact, I think the Guardian is watching that all the time. He reports to us, and if we see anything, we fight them.

Q. In other words, the way for sending hay there is open to competition from the outside? A. Yes, sir, if there is any selling, I would use that term that you do, but a stronger one. Anybody can sell hay there if they want to. Mr. Hill says people can bring in meat and chickens and eggs, but they can't have a store there unless we say so. I think I have seen people come in there with chickens, myself.

Q. And peddle them around? A. Yes, sir; I think so.

Q. Do the Commissioners grant the privilege to those who keep the stores there? A. Every year, yes, sir; twenty-two of them in all; twenty-two now for 1889 that have put in applications. We work on them now in a few weeks.

Q. You do that as you would do with the others. You select from those who make applications; you select one or more, such as you wish to grant that privilege to, but after it is granted it becomes an exclusive privilege so far as the other applicants are concerned? A. Yes, sir; it has to be. That party gets it for the year. You couldn't do otherwise. It would be an impossibility.

Q. I am not asking what could be done, but what is done?

MR. TULLOCH: Of course, you know the prices charged. You said awhile ago, did you not, that the Commissioners determined the prices of things? A. Yes, sir; a great many things. The Guardian is instructed to see that the prices charged are fair—about what they would charge elsewhere or charge under other circumstances, and he reports to us if the charges are in excess. If there was we would stop it; horseshoeing and such things.

Q. What was the price of hay there last summer? A. I don't know. I really don't know. I answered that once or twice. I don't know.

Q. I should think that the Commissioners having charge of those things would know? A. We don't know all the details; you could not. There is not a human being that would know everything about that.

MR. HOOK: Does the Commission have charge of the prices of hay? A. Yes, sir.

MR. GOUCHER: If you are correct in regard to the statement you made awhile ago, that the Commission don't control the question as to who shall sell hay in the valley, and don't attempt to control that, and don't grant any privilege, has it been considered incumbent upon them to investigate that question as to what any parties sold hay for? A. Well, it has not since I have been a Commissioner, because there has not been any complaint. We do not know anything unless we get a complaint; but there are six or seven kinds of notices upon all the verandas and prominent trees and dry-goods boxes all over the valley, informing people what the prices and rates are, and that they shall complain to the Guardian, and then he complains to us. We have only had one complaint out of three thousand visitors this year.

Q. Isn't it true that Coffman & Kenney have attached to their lease a clause requiring them to furnish, upon demand, to campers hay and grain? Isn't that one of the conditions of their lease? A. I think that is so.

Q. So that while they have not the privilege alone in selling it, they are compelled, under the conditions of the lease, to sell when hay is sought from them? A. I think that is so; but upon another occasion I have got all those letters and permits and everything up here, locked up in the committee room.

MR. TULLOCH: By that we are to understand that they are compelled to offer hay if parties require it; is there anything said about the price they are to charge for that hay? A. I don't know that there is.

Q. Is it discretionary with those parties what they charge for hay? A. I think it is understood that they should charge the prevailing price of other valleys around there, like Wawona and other places.

Q. Are there ranches immediately or close around there, outside of the grant? A. I think they charge more at Wawona than they do at Yosemite. I have heard people say so; I don't know though.

Q. Are there other ranches you know of around there outside of the grant? A. No. There are—I think there is a field or two some place between there and Wawona; some little places; but I think there is no place where there is much raised, except at Wawona and Grant's place, half way between Wawona and the railroad.

Q. Do you know where Myers' place at Big Meadows is? A. No, sir.

Q. In relation to exclusive privileges, if there was not sufficient business for two parties to live there and get along nicely, what then was the reason of giving it to one, Mr. Truman? A. Well, I don't know as I could answer that strictly to your satisfaction or my own. It is desired to keep up a store of most every kind for the use of the campers and people who go there, to buy things. Now, for instance, there is a man who has got a lot of woods and barks and so forth, he pays \$60 a year. He don't make any great amount of money out of it, and I was reading on the minutes that some years before another man made an application, and they gave it to this one man—he offered the most money—and not two. I think that there is a necessity for one butcher shop; I don't think there is for two. But I don't think my opinion in that respect would amount to anything; I don't know anything about that.

Q. Has Mr. Cook a store there? A. I think he has; I don't know. Yes, he has a bar and a store.

Q. How many stores are there in the valley? A. Two, I believe.

Q. Do you think there is any necessity for two? A. Well, I don't know but what one could support a great many more people than go there; but there are two ends to the valley, and so far as canned goods and all those things that every camping party wants—fruits and canned tongues, and all those things, why they can get if they are up around the Stoneman House, or down around the Barnard House.

Q. Cook also owns the hotel, does he not? A. He leases; yes, sir.

Q. And has a store as well? A. Yes, sir.

Q. Is that the extent of Cook's privileges; or has he not some more privileges in the valley? A. He has an orchard. I don't know the extent of the acreage which the garden has. He has an orchard and a place to raise vegetables; but he has to promise to carry it on nicely, a nice kind of horticulture. It is a cast-iron permit, and he pays \$300 for that, I believe; \$250 or \$300 or \$350; I think \$300, though.

THE CHAIRMAN: Major, I understood you to say that any one has the privilege of taking a load of produce of any kind—hay, grain, wood, or anything into the valley to sell? A. Well, I drew that from what Mr. Mills said. I don't know that positively, but I am constrained to believe that such is the fact. I think it is rather natural that it should be, looking at it from a common sense standpoint. I think a man can take a load of hay or chickens or such things, but he can't keep store there. The Commissioners buy hay in the valley; they buy either in or out of the valley; and grain.

MR. TULLOCH: Is that for the purpose of supplying the demands of the place? A. Two mules they have and one horse, I believe.

Q. Is that for the purpose or object of keeping up the price of hay and getting a monopoly thereby, or for the purpose of supplying the demand of the valley? A. What is that?

Q. What is the effect or what the purpose of that; is that for the purpose of having a monopoly of the business? A. I think there is a man comes in with a load of hay. I don't know who he sells to; don't know anything about that. I said, which maybe you didn't understand, that we, the Commissioners, had to buy some hay and grain. No monopolists, no other parties.

THE CHAIRMAN: Supposing you or I went into the valley with a load of hay, who would we find there to sell it to? A. I don't know whether you could sell it; I don't know anything about that. You could take it in and get a royal good price for it, or might have no sale. I don't know anything about that, really. If there is anything in that valley; if there is anything to be ascertained; something you want to reach; you have got a sure thing from the Guardian. He knows everything about that. I simply don't know.

MR. TULLOCH: Is it not a dangerous policy to intrust too much to the Guardian, since the Guardian may have a commercial view of the things. He may have an eye to making something he has no right to make, and by the Commissioners being too magnanimous, he may have a tendency to be exorbitant in his demands? A. Well, I couldn't speculate on that; I couldn't answer; I wouldn't know how to answer you. It is like all other business. You have got to trust this man here, as long as he proves true, and this man there. We have got to have one man in the valley. There must be some man, and always has, for twenty years; that is, with the Guardian. There have been several Guardians expelled—that is, they have been voted out and others voted in. When charges are made against the Guardian, the executive committee takes them into consideration imme-

diately and writes him a letter. I have, probably, forty letters in my letter book, which I have brought up, which I have written to the Guardian in the last three or four months, all of which contain instructions; what to do and what not to do, and how to deport himself. In fact, I have been pretty hard on him, I thought, when I came to look over the letters. So we keep him pretty well in view. He has to be honest. So far as we can say, he has to be honest with the moneys he collects, because it is checked off in so many ways.

MR. HOOK: Anybody has a right to appeal to the Commissioners, and make a charge, have they not? A. Yes, sir; the books are all open; his books and everybody's.

Q. Every written charge sent to the Commission is investigated by the Commissioners, is it not? A. Immediately, by the executive committee, which is made up of San Franciscans for the purpose of generally being on hand. There has not been five days since last June that some of us were not in that office, although we all have business, and are all men who ought to be elsewhere a good deal of the time, we determined this year to spend a very great deal of time there; our office is hardly ever without somebody in it, generally two of us.

THE CHAIRMAN: That is, your office in San Francisco? A. In San Francisco; and the best proof of that is that letters from the Controller, from the Governor, and the Treasurer, you will see are all answered the same day. I have brought up the books, which I think probably some evening will take an hour or two to examine, to lay on the table. You can go through and see how everything will connect, and tally, and check.

MR. TULLOCH: You say the place of business is in San Francisco? A. Yes, sir.

Q. Doesn't the law state that the principal place of business shall be in the valley? A. Well, no; I couldn't give it to you, but you can see it right in the law, and we are all right on that. Now, you can read it if you will. You can get it and read it. It distinctly says we shall have an office in San Francisco. The principal place of business, it starts off by saying, shall be the Yosemite, where we shall meet once a year. That is arbitrary. Then it says we shall have an executive committee composed of three members, Vice-President, Secretary, and Treasurer, and their principal place of business shall be in San Francisco or Sacramento. We could come here and have a place of business if we wanted. Those little books that I sent up here the other day will show you.

Q. I believe here are the by-laws. Article first says: "The principal place of business of the Board shall be in the Yosemite Valley, but the executive committee shall have an office in the City of San Francisco." Do you refer to the place of business in San Francisco as the place of business of the executive committee of the Board? A. Yes, sir; the executive committee. We cannot call any meeting of the Board there except one immediately before this Legislature. You will see further down we don't have any meetings of the Board there. You probably know that we couldn't get a Board together; couldn't do any business; the business is done by the executive committee. Everything is left to it. Three men do all the work except the two days in the valley in June. They have been doing it for twenty years. It is all right, there.

Q. Why shouldn't the executive committee of the Board of Commissioners be composed of eight rather than three practical executive men? A. Well, privately I have often said that, and I have told that to Mr. Madden a long time; but of course I could chat with you about that a long time, if it would be of any good to you. Of course it don't enter into this

thing at all, but I think three would be a great deal preferable to eight. That is my private opinion, the same that there is at Yellowstone, but it would take about four years to reach that; four or six years. So I suppose nobody wants to attempt it.

[The clerk read the thirteenth charge.] A. Mr. Robinson, who seems to be the author of these charges, was unanimously permitted, in June last, to have his annual rent reduced from \$20 to \$1. Messrs. Coffman & Kenney also had their rent reduced from \$500 a year to \$300, for 1888 and 1889, five Commissioners voting in the affirmative and five voting against. These are all the reductions made for 1888 and 1889.

Q. What were the reasons for making those reductions, if you know? A. Well, now as far as I am concerned, I was a new Commissioner in the valley, and when I went up I met Tom Hill, who is an old friend of mine, and he came to me with some other gentlemen; there was Mr. Cunningham came to me—I know that it is done in all business—Cunningham came to me and asked me if I would vote for him to be custodian of the grove, which I didn't do. Some gentlemen came to me—amongst others Tom Hill came to me—and told me that there was an artist in the valley named Robinson who had had some trouble or inconvenience, and he had been charged \$20, and a great many people had thought that maybe he was treated fairer than Robinson, and he asked me if I would vote for a reduction of Robinson's rent from \$20 to \$1; and I talked with the committee about it, and found that they were all in favor of it. Although I had never met Mr. Robinson, and knew nothing of him, never heard of him before, I voted with the majority, and we reduced his rent. On the other hand—Messrs. Coffman & Kenney—I did what I am frank to say now I would not do again; but I thought maybe they ought not to have had the reduction, and I voted against it; but I was only one of three; but if I had to do it over again I would vote for the reduction, because that while I believe we ought to have a check, and a pecuniary check, over those men and women up there, that the less rent you can impose upon them the fairer and better it would be, because I don't think they make much money, and they only have two or three months to make it in. I don't know anything about the stage company. They may make more or less money than I know anything about; but I think all those people in the valley, while they should pay something—not artists—I believe that all the artists and people who sell photographs should be taxed \$1. I don't know what that contract is. Maybe it is like a deed. I would do it for nothing, because they all advertise the valley. Every man who paints a picture or sells a photograph or prints a paper about the valley does it good. I think if some of those people make money, like the grocers and the blacksmith—now, the blacksmith, while he is a hard working man and is entitled to \$5 a day, or about \$300 in the course of a year—he makes a good deal of money. I understand he has a number of thousands of dollars saved; I hope he has; although I never met him and don't care much for him, on general principles, because my father once put me in a blacksmith shop and I run away because the work was too hard.

Q. Did you go West? A. I went East; I went from Providence, Rhode Island, up to New Hampshire; but he makes money, and pays \$60 a year, and the Guardian told me, when he was in San Francisco, that he made so much money that it would be a good thing to make him pay \$100. We thought it all over, and thought that, as he was a blacksmith, \$60 was enough. Now, Coffman & Kenney—I was up there one day in August, and there was only two of their horses went on to the mountain, and they had seventy in the valley. I don't know but what they make more money

than I think, but I imagine they don't make more than the law allows. If they do, it is hard work, and hard business. I went up there with the idea to get all the money you could from these people, but I have changed my mind.

MR. TULLY: You think the better policy is— A. To let them have it for nothing, and have a check, but not tax them too hard. Those are the only reductions—those two.

Q. You don't want to divide the profits of their labor between themselves and the State, and take the lion's share of it? A. No, sir; because it is fair to presume that after about \$100,000 that the State has spent in getting the valley, and in building the bridges, and that there never need be but one more bridge built—it is fair to presume that the State will give at least from \$10,000 to \$15,000 a year, although I don't think—after this year I think we could get along with \$5,000 to \$10,000, and keep the trails in order, and do fine work. But there has got to be one more bridge, and the grove has got to be attended to or it will burn down some day. It is in a shocking state; but the valley is growing better and more beautiful all the time, and any of you gentlemen that have seen it once and go into it now, you will be surprised at its beauty.

Q. When you speak of the grove, you mean the Big Tree Grove? A. Yes, sir. That needs a great deal of work and money to preserve it.

Q. What is the reason that it has been left in that condition? A. The money has generally been spent in the valley; it is supposed the old trees have stayed there so long they would keep on staying, but, undoubtedly, the Indians used to burn it out, as you can see. We had some avenues made to four beautiful trees in the grove that stand like sentinels. It was like digging through a snow drift; it cost about \$300 in cutting down saplings and young trees, but it was a great improvement. But there were some little houses built there that were necessary in the grove, that never had been built, but which had been ordered two or three years. Those are the only reductions.

MR. HOOK: Is the object of letting privileges there simply to keep all these different lines of articles for sale there in the valley? A. Sir?

Q. Is the object of having special privileges, or granting it to one, so as to keep somebody in the valley to sell different articles? A. No; but they go there; they have found their way there, and this man is willing, maybe, to put some flowers in a case, and another man will carve some wood, and another man sees an opportunity for selling candy and photographs. We don't send anybody there.

Q. Isn't the object of the Commission to keep somebody there to supply the campers as they come in? A. Yes, sir; that would be the object. If anybody would come there, they would do something in that way.

Q. Is that the object, or is it not? A. It is our hope, yes, sir; our desire, yes, sir; to have somebody in the valley.

Q. To provide provisions and everything that is necessary? A. Yes, sir; somebody is always there. Then, I reiterate, we go over this every year. These people make applications. There are only two things that have a ten years lease, because that would make them hold the stick a little over us. We make them come to the Commission every year with their applications. Twenty men can put in an application for a grocery store. If the lowest of the twenty put in \$10 and the highest \$100, we would take the \$100 man. We would look into the propriety of it and see if he was all right. Maybe if he got drunk or anything like that, or he was not a very good character, we would take the \$50 man. We have to discriminate; we have to have discrimination about those things, and we have it.

According to the by-laws we have a good deal of power. We do it as wisely as we can.

Q. Then you select the men the same as you would in your own business? A. Yes, sir; the same exactly.

MR. TULLOCH: Well, in selecting men in your own business you simply act in your own personal capacity and here you act as Commissioners? As Commissioners you are acting for the State in the interest of a public trust. If you would do as you would in our own case, is it not evident that you would act in your own individual capacity and represent your own business? A. Well, I can answer that question by saying that I think that as agents in doing business for a State, or a corporation, or a government, the better way to do it—I think the more commendable way to do it—you are thought better of if you claim that you do the work or the business, or transact what is demanded of you about the same that you would do for yourself; in other words, you show that you are willing to do for others as you would for yourself, who is always a peculiarly interested party. I didn't quite catch on to your entire question. I believe it is generally understood the world over—it is a sort of boast—I have heard it said a thousand times—"I would do that for him just as I would do it for myself." The boast that you are doing as well as you would for yourself.

Q. Under the head of charges for the artists, and so forth, why is it that Mr. Robinson, up to June, had to pay \$20 a year, I believe it was, for the privilege, and Mr. Hill had to pay but \$1? Is that true or untrue? A. Yes, sir; I don't know anything about it. Would you like to have me state what I heard?

Q. What you know? A. I don't know anything about it, but what I have heard is peculiarly romantic, if you want that.

MR. TULLOCH: Yes, sir. Is that within the province of the inquiry, or not?

THE CHAIRMAN: I think it is not necessary to go into that.

[The clerk read the fifteenth charge.] A. Since I have been Commissioner no such thing has taken place. The wages of the laborers have not been withheld, and they have been paid up in full to January, except that there are a number of old back-pay accounts that grew out of the eight-hour-a-day law, and are not yet adjusted.

MR. TULLY: You speak of the eight-hour law; that was explained the other evening, but we would like to have your version of it also? A. The only thing I know about it is that in the June meeting there was a few of those men who had worked ten hours instead of eight, and in adjusting this, according to the law, they were entitled to a certain additional amount of money that they had never got. Now, the vouchers have not yet been made out for them. We had sixty odd working at one time in two months, this year. Three new bridges building, and an addition to Barnard's, and beautiful roads made; and they have all been paid up in full. The moment we got their accounts we sent them to the Controller or Board of Examiners; and when we got them back, the same day the drafts went up in the valley. I have done that, and I know as a positive fact that they have been paid. We do not owe a single dollar to-day, except a few of these back-pay accounts that we have not paid yet.

Q. I understand you that the rule is there that laborers are usually supposed to be employed for eight hours a day, and if they work overtime, they are allowed the same rates for the hours that they work over that they would for the eight hours, per hour? A. Yes, sir; and they know it like a book.

Q. These back and unpaid claims you speak of are claims for overwork,

that is, hours in excess of the eight hours a day, for which claims have been made that have not yet been adjusted? A. Yes, sir; not for current labor. They performed this work some time before they knew the State law, and they found it out, and they made a claim, and the Commission said they were entitled to it from that date. It is not the current work of last year, but it is something away back; we keep up the payment.

Q. The matter, I understand, comes in this shape— A. Mr. Goucher can state that exactly.

Q. I think I will get that straight. I understand these claims originated in this way: That at the time they were performing that labor, it was not understood that they would get any extra pay, even though they worked beyond eight hours? A. That is it.

Q. But since this law has gone into operation prescribing eight hours as a lawful day's work for government business, that they have put in a claim for the extra hour's work for that work had some former period, and that is the nature of the claims that are now before the Commission? A. These pay accounts the Board unanimously resolved to pay, but the papers have not been made out; I think partly because maybe we were a little slow, and partly because it was something that we were not looking ahead that we had got to pay, and we were waiting for further appropriations.

Q. I desire to have this thing made perfectly plain, because Mr. Mills in his testimony yesterday evening, stated that it was the rule there that they ordinarily understood a day's work to be eight hours? A. That is right along now, all the time.

Q. But they would pay extra beyond the eight hours; they would pay in the same rate at which they paid for the eight hours? A. Yes, sir.

Q. And the inference from his answer to those questions was that that was the custom of the Commission, and it left the impression upon my mind that these claims had originated in transactions that they had had where the understanding was that they were to work eight hours, and if they worked over that they would get their money, and not that it is a subsequent idea to put in a claim for what they had not claimed before? A. Since then they worked ten and may be eleven hours in some days, and it is to put on the days, and they get their pay right along.

Q. I am speaking with reference to these back claims? A. That is still back.

Q. These unliquidated claims?

MR. GOUCHER: Whenever I am before this committee for the purpose of giving evidence, I can give a better explanation of that matter than any of the other Commissioners, I think. At the time this Commission first took notice of the fact that the men were being worked more than eight hours a day, Mr. Truman was not a member of the Commission. However, it came up in another form when he was a member of the Commission last June.

MR. TULLY: I presume you will be a witness. I simply wanted to make plain the apparent discrepancy between Mr. Truman's statement and the impression that was left on my mind, at least, on yesterday evening.

THE WITNESS: You have it, as I understand it.

MR. TULLOCH: Is it true or untrue that parties did in several cases contract themselves out to the Commissioners to work ten hours a day? A. I don't know anything about that. That you might remember and ask the Guardian. It will suggest itself to you when those charges come up. That I don't know anything about. He is the executive man there. That detail of work I would not know anything about.

[The clerk read the sixteenth charge.] A. The Stoneman House was accepted before I became a member of the Board.

MR. TULLY: Do you know anything yourself about it? A. No; nothing whatever.

Q. Tending to throw any light upon these charges? A. Not at all, and have no information, either.

[The clerk read the seventeenth charge.] A. No trees are cut down in the valley for purposes of fuel. But there are more or less trees that are cut down at times and corded and sold at a good price, and the money paid over to the Secretary by the Guardian. There are also trees cut to make or preserve vistas, and the wood is cut into fuel and sold.

Q. That is your answer to that matter? A. Yes, sir.

MR. TULLOCH: Is there a considerable quantity of wood cut, old and young trees, of any kind? A. I don't think there is. All these people—these grocers, and other stores—there is only one or two—I guess there are no nights in the valley that they don't have fires. I have never been in the valley that they didn't have fire; there may be some, but for culinary purposes. There are some fires there all the time, but there are plenty, big and small—there are no fine trees cut down for that.

Q. Does it bring in considerable revenue? A. Well, it is a pretty fair price. The Guardian reports it so many cords to such a man; a cord and a half to this man.

Q. Have you any idea how much money the Secretary receives? A. For that alone?

Q. Yes, for wood cut? A. No; but I think that—the reason that I didn't bring my books, that we could go over all these things in a bunch, it is a tremendous pile, and you would have to get up and get around the table.

Q. Do you know how much the wood was sold for per cord? A. I do not. I check it off and add it up, to see if the totals of everything come out right. I think \$3 50.

Q. A cord? A. I think so.

MR. ATKINSON: \$2 50, Mr. Truman. A. \$2 50; all right.

MR. COOK: Have they cut it?

MR. ATKINSON: Latterly the workmen have been cutting it.

MR. HOOK: Do they sell it in the tree for \$2 50 a cord? A. At the stump.

MR. TULLOCH: Do you know these things yourself to be true, or do you simply go according to the judgment of the gentleman who has just given his knowledge of the matter; you don't know these things yourself, do you; you don't know anything about the price per cord? A. No; I could go in a committee room in a quarter of an hour and get the paper and commence and work through eight years, but that don't enter into my testimony at all. I wouldn't have thought of putting that down—what was got a cord.

Q. You spoke about the preservation of these vistas. Who suggested the preservation of these vistas by cutting away the trees, and how came they to be cut away in order to preserve those vistas? A. Well, I suppose most any Commissioner; maybe the Guardian sometimes; maybe some Commissioner.

Q. Well, in case the Guardian suggested it, doesn't it appear to be an adverse policy to go according to the suggestion of the Guardian in this matter? A. He would not have the authority to make a vista; he would not be permitted to. That would be done by the Board upon the spot.

Q. Then the Board are responsible for the cutting away of the trees and the selling of the wood. A. Yes, sir; wholly.

MR. HOOK: Are there many of those old stumps of trees left there so as to

disfigure it? A. The last time I was up there, in August, there was quite a number left around the Stoneman House; and without exactly considering that I had the authority, I suggested to Mr. Cook that it would be nice to have those stumps removed, and he said he was going to do it. I think he was going to do that himself. I don't know whether he has or not.

MR. TULLOCH: Are there not a lot of stumps in the pasture near the old Hutchings cabin? A. I think there are some left there—yes, sir. I think the grass has grown up around them pretty well.

Q. The cutting of these trees for the preservation of vistas, and so forth, and these old trees, and these young trees, does that go along a little every year? A. Oh, yes; there are leaning trees, and trees will get old. You can see the decay in the branches above, and there are lots of reasons that we can see there that we could not present here, maybe, to your full satisfaction.

MR. HOOK: Do you ever allow a tree that is a beauty and an ornament to the valley to be cut? A. I don't think that there has ever been such a thing. I don't know wholly. I guess most everybody testifies that there has never been any such thing done.

MR. TULLOCH: Wasn't there a whole grove of trees cut out of the State pasture some time ago? A. I don't know.

Q. These trees are cut every year. It is not possible the trees get old, and decay every year, is it? A. Well, I don't know.

[The clerk read the eighteenth charge.] A. This charge is positively untrue. No human being has to pay a cent toll over any road or trail within the grant, and the tolls, if there are any outside of the grant, are created by County Supervisors. The leases made out to the two stage companies in June last by the Secretary, forbid tolls within the grant, make the same revert to the State at the expiration of the lease in 1898, and are the most iron-clad leases ever made by the Yosemite Commissioners. I have the leases with me for inspection.

MR. TULLY: Those leases refer to what portion? A. The two stage companies' leases expired this year, for ten years. We made them out again.

Q. Leases for what? A. For running stages into the valley.

Q. Over those roads? A. Yes, sir; they couldn't run into the valley if we didn't say so, and we give them a lease to run into the valley; we give them that permission for ten years; outside we have nothing to do.

Q. What did they pay? A. They don't pay anything, of course. We make the charges. We were four or five days having that thing under consideration. Of course the stage companies fought it, I might say, and we at last carried it. There can't anybody charge any tolls.

Q. They can't legally do it? A. They can't, anyway. There has not any such thing been done. No human being can get up here and say so. I am positive of it. Now, the thing they fought was that it should revert to the State, and we have made those roads revert to the State after ten years.

Q. I believe that charge states a reverting or returning to the old obnoxious system of toll roads? A. There is not any. I try to make this brief, and not diagnose the term old, vicious, and obnoxious. I know that there is no obnoxious or vicious system now. I don't know whether there used to be or not. I heard Mr. Mills say there were tolls formerly. I think I did pay tolls when I went into the valley years ago, for going on trails; but I went in the valley on stage, and the toll was got out of me on my stage fare; but when I got in the valley I paid toll. There is nothing of the kind.

Q. Your answer is an unqualified denial of that charge? A. Yes, sir.

Q. That tolls have been collected within the reservation or grant? A. That is, there are tolls to be collected. Nothing on trails, roads of any kind, from any human being. That is a positive fact.

MR. HOOK: Would you, as Secretary of the Commission, know whether any tolls are collected or not, if they were collected? A. Yes, sir; I would. I would come very near knowing.

MR. TULLOCH: At the June meeting of the Commission were not the Washburn Brothers allowed the right to collect \$1 toll from every passenger within the grant? A. No.

Q. You spoke about the leases being iron-clad. In what respect were they iron-clad? A. Well, we made them much stronger than they ever were before. I have brought the other leases, too; I have brought everything, so you can look at it. You can take the Washburn lease and the other lease and compare them and see how we have drawn them this year. I couldn't remember the terms or phraseology, but I used that term, and of course you will see that it is so when you look at the leases. It will take an hour or two to look over the books.

MR. TULLY: I understand that what you mean by iron-clad, is that they are drawn with a special view to protecting the valley? A. Yes, sir.

Q. And the interest of the State and people at large? A. They were there with their agents and lawyer, and hung to us three days to have things in or eliminated that we didn't want to, and we stuck by it.

MR. HOOK: Can you suspend the contract, or suspend those leases, if they violate their contract? A. Yes, sir. We work that thing; we can suspend them to-morrow. We have the power to suspend anything that is going on there in that valley.

MR. TULLY: That would be one of the features of the iron-clad portion of it? A. Yes, sir; it is in the laws, in the by-laws.

Q. That they specially provide, not only for protecting the valley and the people, but for ousting anybody or any party; keeping the matter absolutely within the control of the Commission? A. Yes, sir.

MR. TULLOCH: In relation to the trails which McCauley had. Wasn't that kept formerly, under McCauley, better than it is now under the supervision of the Commissioners? A. I don't think they were. I went over it years ago when we were up. I think they are in better condition now, and we have got a great many miles of trails, ten times as much as McCauley had, and we have got to keep them clear in winter. We have to have little gullies. We have a man watching them to keep the snow from destroying them. They cost a good deal of money. We keep them in good repair. I have never heard of a human being having been hurt. I have seen hundreds of people go up. The trails are in splendid order this summer.

Q. Has any improvement been made on Eagle Point in the last two years? A. That trail I have never been over. I have been over all the rest, but didn't go over that trail this year.

Q. Isn't that one of the most largely traveled trails in the valley? A. No, sir.

Q. One of the most important ones? A. No, sir. One of the most important, because there are only three or four or five in all: I consider the Eagle Point trail the third trail in the valley. Now, I will tell you: in going to the valley there are some persons who go and only stay one night or day; but generally people stay three days. They go up to Vernal and Nevada Falls, and Mirror Lake. That is a thing that everybody sees who stops a day. If they stop another day they go to Glacier Point. Now, there are probably two people go to Vernal and Nevada Falls to one on

Glacier Point, and probably twenty to Glacier Point to one on Eagle Point; more than that. Everybody goes to those places. Eagle Point is an awfully long, difficult ride, and when you get up to Glacier Point it is the grandest sight in the world; and you see the valley and more waterfall than you can from any other point. You are pretty well tired when you get down. Eagle Point is twice as long and twice as hard. It is one of the important points, you might say.

MR. ROBINSON: I would like to ask you if you have not heard that Eagle Point is one of the finest view points in the Yosemite, along the trail? A. I think it is one of the finest.

Q. What is the reason people don't go there oftener? A. I don't know.

Q. Have you any idea? A. I don't know.

Q. Do you consider it was a wise expenditure of money on the part of the Commission to build a trail from the head of Yosemite Fall over to what is called Yosemite Point, within the last two years? A. Well, I don't know as I know about that. I had nothing to do with that. I suppose it was built in the wisdom of the other members of the Commission. I couldn't say. Now, I have not been over that road. If I had anything to do about it I should be pleased to answer; I would give my own opinion very quickly; I don't know anything about that. I have been over Eagle Point; I think it is grand, but not compared to Glacier Point by any means.

Q. If there are twenty people or thereabouts travel to Glacier Point where there is one over the Eagle Point, approximately, wasn't it an unwise expenditure of money to build that trail from the head of Yosemite Fall, inasmuch as you would have to go over the entire Eagle Point trail—to go to the head of the falls you have to travel four miles and a half over that trail? Wasn't it an unwise expenditure of money to build another mile and a half or two miles of trail still further along, to a point inferior in height and beauty? And if there are no people going over the trail, don't you think it was? A. I consider myself too fair a man to pass judgment upon the other members of the Commission that built this trail, which I know nothing about.

THE CHAIRMAN: I want to ask you one question. Why is it that the Commissioners grant a ten years' lease to the stage company, while they only grant a one year's lease to other people doing business in the valley? A. Because they have spent a great many thousands and tens of thousands of dollars on the road; because it is done everywhere in the world, and there was no hesitation. We didn't enter into any discussion at all. We would not have dreamed to ask those men, with their fifty or sixty or seventy miles that they keep up all the year and spend thousands of dollars on, to take a one year's lease. I suppose that is it. I never had anything to do with granting leases before in my life. It is a little out of my line, but I would naturally see that point. That is the answer I would naturally give. As to the matter of dealing with men who have put big money into a thing, they would naturally demand a lease. Now we would give—there are one or two people in the valley that get a two or three or five years' lease. Coffman & Kenney got a five years' lease, because they have got a hundred horses. While we say, if we give them a one year's lease, "If you behave yourself, we will keep giving it to you;" but the other side always wants a little longer tenure, you know. That is it. In reversing it, I would say to myself that I would demand the same. It is the same thing in a water or gas works, or a dam, or anything. A man will rent you a house for a year, but he won't put up a gas works and lease it for a year.

MR. HOOK: Do you compel the stage company to go into Yosemite once

a day, or so many times a week? A. No; we don't compel them. That is governed by the traffic—the passengers. They sometimes run three or four stages a day; sometimes they fill up three stages and run in a stage with two. I recollect Mr. Goucher and I had a stage by ourselves last year; not because we were Commissioners, we were crowded in. There were three stages, each had sixteen passengers. There was three times sixteen, and two; I think because possibly we were a light load they put us in, and we arrived there about half an hour ahead.

Q. If a visitor, a man, wanted to visit the valley, a man, woman, or child, is the stage company compelled to take them in, and not have them lay over at any place? A. I don't think they would, but they never hold a passenger back. They run in with buggies and stages. I will say that for the company, although I am not intimate with them, and don't care a snap about them. They never leave anybody over. Those are times when they lose money. They would rather see sixteen or thirty-two, or three times sixteen come; but they run four or five stages. Then again, I was there in August, and many a day the stage, even in August, came in with one passenger, or none.

Q. If a person that wanted to enter the valley stopped at some of these towns on the way, and the stage company didn't go in, could he make charges against the stage company? Can they be answerable for it? Suppose a man comes to a certain town out of the valley, and the stage company refuses to bring him in, could he make charges against the stage company? A. Yes, sir; they would want to bring him in.

Q. Could he do that? A. Mr. Hill says they agree to carry them in. But I don't think you mean a passenger that they had anything to do with. You mean a fellow that turns up in the middle of the road.

Q. A person that comes along on his own hook? A. They will do it; yes, sir.

MR. TULLY: Are the leases so drawn that these stage men obligate themselves to bring in all passengers? A. I don't think there is anything in the lease about that, but as a matter of business they will take up the man.

Q. It is to their interest to bring those men in and they will do it? A. Yes, sir; I have never heard of a stage that would not.

Q. You don't know that there is anything in those leases absolutely requiring it, and that a failure to do so would vitiate their contracts and give them an action against the company for not doing it? A. To give an opinion. If that man was sixteen miles out of the grant and they wanted to be hoggish, I don't know that we could compel them to pick up that man, I don't know that we could, but it has never come up such a question. I think they would do it, though. They want the coin, all the same. If the stage was full, they would put a man in—work him in, if they could.

MR. TULLOCH: In relation to granting leases to different parties and to corporations: for instance, in the case of Coffman & Kenney—of course, they are not legitimately a corporation, but they are on that basis, I presume—why is it they are granted a lease, for instance; one reason, I presume, is that they do so much for the public weal and welfare, and especially in the valley; and artists, for instance, are not allowed like privileges, in view of the fact that they render a great service to the valley? A. Well, because the saddle company take in about one hundred horses; we will say fifty; I think the maximum is eighty; along there somewhere; they take in hay and grain; they take in a hundred saddles, and the artists can go in with a satchel. That is plain; that is awfully easy to see. And

the artists are the kind of people, that it is understood privately with the Commission, that we like to hold pretty well in check, too.

Q. Do they caricature the methods of the Commissioners, or why do you elect to keep them in check? A. Well, I don't like to enter into the ethnological and physiological reasons, but the artists are a pretty tough set of customers the world over.

Q. The Commissioners are down on them as a rule, are they? A. No; I won't say that. I think they are a pretty hard crowd to get along with; but I will except present company when I say that, of course, because I don't want to be killed in the State Capitol.

Q. Why is it, then, that these parties are granted leases; for instance, Coffman & Kenney, with a hundred horses, on account of the large business they do, and these artists, on account of taking pictures of the valley, and rendering for all time the beauty and grandeur and romance of the valley a part of the art estates of the world, why is it that they should not be treated likewise? It seems to me that that is worth more than all monetary considerations. Why is it that these artists, in consideration of the great value that they do to the valley and the great work that they do for art, why is it that they are not permanently entitled to leases over parties who merely have pack trains or horses or animals, who do get leases from the Commissioners? A. Well, I think I have partly answered that; but to go on, it is because we want to keep most parties in check and have them apply to us every year. The only artist, I believe, that ever had a lease there was Mr. Hill, and he came last year and surrendered it, so as to be on the same footing with all other people in the valley. Now, that is as far as the artists. Now, to answer that more promptly I will say that it is done because, in the wisdom of these eight men, they deemed it judicious to do so. Now, I can't answer it in any further detail than that.

Q. You spoke awhile ago about giving the iron-clad leases to the stage companies as corporations, and giving them for ten years, and to Coffman & Kenney, or other parties, from one to three or five years; and you did say that the reason for giving it for ten years in one case, and for two or three years in another, was from the fact that these parties had invested a larger amount of money, did you not? A. Yes, sir; we have given the lease to the stage companies and to Cook, of Cook's hotel, and Barnard, of Barnard's hotel, for ten years, because they have spent a large amount of money in furniture and in horses and carriages and in roads. I believe Coffman & Kenney also have it for ten or else for five. Somehow or other I think theirs is five, I am quite sure; but all others are only one. But they all ask generally on their application—a man with a forty-dollar application, if it is a blacksmith, he asks generally for ten years, but we don't give it to him but for one.

Q. In relation to these corporations, is it not a fact that the amount of money that they make for the time for which the lease is extended—ten years—is unquestionably greater than the profits which the other parties make for the time the lease is given to them? A. I don't know; to give you my word and honor I don't know.

MR. HOOK: Could you get the stage companies or Coffman & Kenney to take these places without a ten years or five years' lease? A. Well, I doubt whether we could without a great wrangle.

MR. TULLOCH: Could you get any other parties to take it? A. I don't know.

MR. TULLOCH: You might not be able to get those parties, but possibly other parties might.

[The clerk read the twentieth charge.] A. This is also absolutely false,

and can be proven to be simply and unequivocally untrue. The roads and trails were in excellent condition during the past year, and new roads and new bridges were built, so that there are beautiful drives all over and around the valley; and a majority of visitors now go to Mirror Lake on foot, and a great many to and from Vernal Falls. That is a mighty unjust charge, and is absolutely false.

MR. ROBINSON: The Eagle Point trail stands in justification of it. A. It is the only place I did not visit in the valley.

MR. ROBINSON: It is hardly just for you to say a charge of that kind is false. A. I quote Governor Waterman's daughter and Miss Kewen, and a good many others. I name those, but there were some twenty or thirty people who went over the trail, and they all spoke highly of it and said they had a good time; and they came back on time, and everything was in excellent order. Now, the other one, I went over every foot of it, even the long trail from Snow's to Glacier Point.

MR. TULLY: Mr. Truman answers categorically, that they are absolutely false, and I don't know that we can get around that.

[The clerk read the twenty-first charge.] A. I have never heard of such a thing, and I believe the charge to be flippant, mendacious, and false.

Q. Do you believe it to be untrue, or do you know it to be untrue? A. I believe that.

Q. You don't know it to be untrue? A. No.

Q. You don't know of any instance of that kind ever having occurred? A. No; I don't know.

Q. Either during your own administration or in former administrations? A. No, sir; and from the character of the men, the Commissioners, I don't believe it.

THE CHAIRMAN: I understand you to say you don't know that it has not been done? A. I could say that; yes. I don't know for certain. I would say that in law; but I don't know it. I don't take that ground in the way of defense. I want to say all that I possibly can, and be catechised, and state everything frankly; of course, I don't really know anything about it.

[The clerk read the twenty-second charge.] A. I wish to say to the honorable committee that this charge is so absolutely untrue, harsh, unjust, and contemptible that I disdain to answer it, but will leave it to the wisdom of the committee, after the taking of all the testimony, and their weighing well and fairly the character, intelligence and character, and good intentions of the gentlemen who compose the Board, and the general animus of their accusers. There is one thing absolutely certain, you will find the Commission a body of honest men, and strictly dead on the square; and if, on the other hand, you prove us to be incapable, incompetent, or feeble-minded, you can report us as a set of d——d fools. Speaking for myself alone, this is my first arraignment upon the charge of imbecility and dishonesty; but as the record of my public life has been hitherto free from censure, and as I have occupied some very prominent positions in the gift of the general Government, I will respectfully throw myself upon the unbiased judgment of the investigating committee, and graciously take my chances with my accusers.

MR. TULLY: I understand, Major, this question, of course, it was putting you on the stand and making you, to some extent, a witness against yourself, but perhaps if you had availed yourself, which you did not, of the privilege of declining to answer, of course I should have felt myself bound, at least, to excuse you from answering those questions, but as you did not raise the question yourself, I am satisfied that you are answering it. It

was not my business to raise it. A. If you will permit me, I have understood all along that this is not exactly a Court; it is a committee of gentlemen to look into the conduct of other gentlemen.

Q. It is something like a grand jury. A. And as you said last night, kindly, and I saw all through the evening, that there was a good deal permitted that would not have been permitted in Court. I think that all feel kindly towards each other. I believe that men coming to investigate us feel that we have done the best we can, and they hope to find out that we are pretty fair men. Now, as we have been somewhat deviating, and as I have been catechised—and perfectly willing, rather like it—by that gentleman, I suppose you have no objection—I know he will not—to my asking him a question, have you?

THE CHAIRMAN: Mr. Robinson will be a witness upon the stand. I think as Mr. Robinson is coming on the stand, we had better wait until he testifies. When Mr. Robinson goes on the stand you will have an opportunity.

[Adjourned to the call of the Chair.]

THURSDAY EVENING, February 7, 1889.

CHARLES ATKINSON.

Being sworn by the Chairman, testified as follows:

THE CHAIRMAN: Where do you reside, Mr. Atkinson? Answer—I reside in Tuolumne County.

Q. Is that your place of business? A. At present; yes, sir.

Q. You have been in the Yosemite Valley? A. Yes, sir; I have been in the Yosemite Valley—well, until last October, constantly for two years and a half, I think it was, and before that for about eight years I was there, well, pretty near all the time. One or two seasons I didn't go in, but I was always with people who had been there, and well conversant with everything that was going on.

Q. And when did your first connection with the valley commence? A. In 1878.

Q. In whose employ have you been there? A. I went in there in the employ of J. M. Hutchings.

Q. And since that? A. Well, I have been in everybody's employ there more or less; in the State's employ most of the time; for the Commissioners most of the time; in fact, nearly all the time.

Q. You are familiar with the charges preferred here against the Commissioners? A. I have heard them read here; yes, sir.

[The clerk read the first charge.] A. I don't know of any moneys that have been squandered or misapplied, except perhaps as an error of judgment. It would simply be a question of judgment as to the application.

MR. TULLOCH: Do you know anything about the money, anyway? Do you know how it has been appropriated in any manner, whether it has been squandered or not? A. I should say that there had been no money squandered.

Q. Do you know whether there has been any money appropriated? Do you know of your own knowledge that there has been any appropriated here or there? I mean to say, applied? A. I know that there has been

money spent. I know that there has been money spent in the valley, because I have had considerable of it myself.

MR. CRAWFORD: Whether it was spent judiciously or not you don't know? A. I should say it was. Certainly.

MR. TULLOCH: What are your opportunities for knowing whether it was judiciously spent or otherwise? A. I should say that in my judgment it was spent judiciously. That is where I would say the question of judgment came in.

THE CHAIRMAN: What branch of business there in the Yosemite Valley have you been most familiar with? A. Well, what work, do you mean, carried on?

Q. Yes. A. Everything connected with the work?

Q. Yes. A. The last year I was foreman under McCord—from the first of September, 1887, until 1888.

Q. Had you anything to do with disbursing the moneys? A. Not a cent; I never paid out a cent. There was never a cent paid out there except what would come up from below.

Q. And your answer is a general denial of the charge? A. Yes, sir.

[The clerk read the second charge.] A. Well, I don't know of any forcible breaking or entering. I know that there has been a number of buildings destroyed there, and one was Mr. Robinson's studio. I know that his goods and chattels were removed from it and stored, and the building moved. The first building that I remember was a house built by Mr. Howard, up at Mirror Lake. He had a toll road to Mirror Lake, and had a house there, and when they purchased the road—they purchased the road and paid him for it—and afterwards the house was torn down; and at the next meeting of the Commissioners he put in a claim for damages for the house and they paid him for the house.

THE CHAIRMAN: Do you now speak of Mr. Robinson? A. That is what I say. There were a number of houses torn down. Mr. Robinson had a studio there.

Q. You mentioned some house that had been paid for. Was that Robinson's or Howard's? A. That was Howard's.

MR. HUTCHINGS: Wasn't it burned down? A. It was torn down, and the old material was burned. It was an old shebang; it was not a house; it was simply an old shebang.

MR. TULLOCH: What is the difference between shebang and a house? A. Well, it is in the application of the word, as I understand it; a little old shanty, put up of shakes, as this was.

Q. There is no difference between a shebang and a house. It is merely a local term applying to certain parties who reside in certain parts of Tuolumne? A. No; I would not call this place a shebang.

MR. CRAWFORD: Who burned that house, or tore it down? A. It was torn down, by the order of the Commissioners, by Mr. Galen Clarke.

Q. Do you know that to be a fact? A. I didn't see it torn down, but I know it was done.

Q. Was that private property? A. No; I don't think it was. They bought the road, and, I suppose—and I always did suppose—that their supposition was that they bought the house, also, in buying this road.

Q. The Commissioners, you mean? A. Yes, sir; but Mr. Howard didn't seem to think so, and when he put in his claim for damages, they paid it immediately.

Q. What was it about the artist's house? A. There has been a number of others. If you will please bear in mind that all houses that are built in the valley, all structures are built with the express stipulation that they

shall belong to the Commissioners the moment that they are erected; and there was a house built by some Mexicans—the Flores family; they used it for a laundry; they left the valley, and I don't know whether they—the State didn't take possession of it. Fagenstien got it for the sale of pictures. He had a woman there selling views for him, and I think the Commissioners considered her a disreputable character; in fact, she has turned out to be so since—Miss Mattie Atkins. She was living with a man on the river; she got tired of him and married another man, and this man that she had been living with went to the house, and he was shot and killed.

THE CHAIRMAN: This is not relevant.

THE WITNESS: I want to show her character. This man was shot and killed. Afterwards she separated from her husband. He went to the door and called on her, and cut her throat, and then went out and blew his own brains out. I think the Commissioners considered her a disreputable character, and, to get rid of her, notified Fagenstien that he could sell no more views from the house; and he moved his things out, and they tore the house down.

MR. CRAWFORD: As a matter of fact, that house belonged to the Commissioners? A. I don't know about this Howard house. That was erected before I went to the valley, in 1878.

Q. That was on the ground? A. Yes, sir. Then there was another little house—

THE CHAIRMAN: You say Mr. Fagenstein—did he ever receive any pay from the Commissioners for that house? A. I don't know that he received any pay. I don't know that he paid anything for it.

MR. ROBINSON: He paid \$100. A. I don't know anything about that.

MR. GOUCHER: Mr. Chairman, I don't believe that those interjected remarks ought to be taken as evidence. Mr. Robinson will be on the stand. I merely make the objection now.

THE CHAIRMAN: Wait until we get through with the witness.

THE WITNESS: There was another little shanty built of shakes, over under the Yosemite Falls. There had been two parties living in it, John D. Lambert, and an old Frenchman named Manis. That is what I should call another shebang. It was a house of one room, built of shakes, and that was torn down. Well, I think in the letters to the Commissioners that was denominated as a squaw house; and that was their reason for tearing that down. There was another place—well, it was not a house; I don't know whether it was private property; there was a place built under a flat rock, with walls up; it was called the Robbers' Roost. That was destroyed and demolished and the walls torn down. That was another place of popular resort. I have heard that action complained of, it being an object of interest to tourists. Then there was a house built by George Anderson. That was certainly built after the rule came into effect that any property built upon the ground should belong to the Commissioners. He started to build a new trail to Snow's. He built him a house, by permission of the Commissioners, at the foot of the trail, in which to keep his men. The trail was never brought to completion. Anderson died, and the house was demolished.

MR. TULLOCH: Who demolished the house? A. It was demolished by the order of the Board; by the order of the Guardian; I can't say by the order of the Board. I suppose it was.

THE CHAIRMAN: What was that house torn down for? Why did they tear it down? A. To get it out of the way. It was right at the foot of the trail.

Q. It was disfiguring and marring the valley? A. Yes, sir; and, how-

ever, if it had not been torn down, there was a big tree fell right square across the chimney now; a big pine has blown down and lays right square across the chimney.

Q. Did he have any indemnity for that? Was he ever paid? A. He was paid.

Q. He was paid at the time? A. Yes, sir; I think he was paid at the time.

Q. You said that house was built before the present— A. I am quite certain it was. I know he started to build a house in another place. They gave him permission to build a house for another place, and he had the foundation for the floor laid, and they stopped him.

Q. Go on. A. Then let me see if there were any other houses. There was an old house at the Folsom Bridge, close by the rancheria. That was also torn down. That is all, except these hotels, of course. That is all the houses, I think, that have been torn down that I can remember of, except the Cook hotel and the Leidig hotel. The Cook hotel was an old shingle structure, made out of shakes on the outside. Of course, the floors were all sawed. It was about to fall down.

MR. CRAWFORD: That is all the private property you know of being destroyed? A. I don't call that private property. Then, Mr. Robinson had a studio there. The leases, or permits rather—I think they give no leases as a general thing—go from year to year.

MR. TULLOCH: You think so. Do you know so as a fact? A. Yes, sir.

Q. Of your own knowledge? A. Yes, sir; I know of my own knowledge, with the exception of leases. Barnard holds a lease, and Cook holds a lease, and I think Coffman & Kenney. I don't know whether theirs is a lease or a permit. I know that they did have a blank form in the form of a lease. Then they made it out in the form of a permit.

Q. Has McCauley got a lease? A. I think McCauley has a lease; yes, sir. Yes, sir; he has a lease. I think he has, under certain conditions. They are all under conditions, in fact. Yes, sir; I think McCauley has a lease. I don't know but Snow, too, holds a lease. Snow built his property. He has never been paid for it.

Q. Why was he not paid for it? A. I don't think that he has ever applied for it. I don't know but what the houses were built with the stipulation that they should belong to the State.

MR. CRAWFORD: Do you know? A. I don't know but what his house was built at that time.

THE CHAIRMAN: Is Snow occupying the premises now? A. Yes, sir; he is.

MR. ROBINSON: I call the attention of Mr. Goucher to the fact that Mr. Hutchings interjects remarks.

MR. GOUCHER: It is unnecessary for me to call the attention of the committee to the fact that that is entirely irregular, and is no part of the evidence.

MR. ROBINSON: I saw no attempt made to stop it last night, or a night or two ago, when Mr. Truman interjected and helped out Mr. Mills in several cases.

MR. GOUCHER: That is the fault of the committee and not mine. If they transgressed any rules they ought to have been stopped.

MR. HUTCHINGS: May I be permitted a moment?

THE CHAIRMAN: Not now, please, Mr. Hutchings.

THE WITNESS: One word in regard to demolishing these structures. I know it has all been done in the interest of morality.

MR. TULLOCH: Have you a committee on public morals? A. The Guardian is supposed to be a committee on public morals, of one.

Q. Is there any necessity for a committee on public morals? A. I know that there are a great many little half-breeds running around there.

THE CHAIRMAN: Have any parties whose property has been destroyed by orders of the Commissioners received any compensation from the Commissioners? A. W. J. Howard has, positively.

MR. CRAWFORD: He is the only one you know? A. That is all I know. I don't think that anybody else has ever put in a claim, that I have ever heard of.

Q. You don't know of any other kind of property being taken for private uses except those buildings? A. None whatever.

MR. TULLOCH: Why were certain hotels which were not tenanted pulled down in the interest of morality? A. When I come to the hotels—well, if you had seen the condition of Cook's hotel when it was torn down—if you had helped to tear it down—you would certainly have said it was torn down in the interest of morality. Leidig's was occupied—that is, he had his two boys there until that was torn down. Cook's hotel was about to fall down.

Q. Was Leidig's hotel in such a condition that it necessitated tearing down? A. No, sir; not in my opinion.

Q. What has been done with the ruins and remains? A. It has been used, the most of it, in the repairs on Barnard's hotel.

Q. Then there was no necessity for tearing it down, was there? A. No absolute necessity. No, sir; no; there was no absolute necessity.

Q. If the material was of such a strong character that it was used in the construction of other hotels or other buildings, or could be used subsequently for anything, as you have just testified, then there could certainly have been no necessity for tearing it down, in the interest of decay, or anything of that kind? A. Not in the interest of decay or morality, certainly not; but there might have been other necessities. Perhaps when you go further into the examination you will find out, Mr. Tulloch.

MR. GOUCHER: These cabins which you have spoken of—the Anderson cabin, the Howard house, and the others mentioned—were they the property of the people who occupied them prior to the time they were torn down, or did they belong to the State? A. I think they belonged to the State.

Q. You were a foreman, I believe, in Yosemite, at the time the Anderson cabin was constructed, were you not? A. No, I was not. I was employed there when it was constructed; I was employed there that summer.

Q. Did you know at that time that that was built with the permission of the Commission, and for temporary purposes? A. Yes, sir; that is what I always considered.

Q. How in regard to the Howard house? Were you there when that was built? A. No, I was not. That was built long before my time.

Q. Do you know under what conditions it was built? A. I do not, sir.

Q. Were you there when Mr. Howard vacated those premises? A. I think I was; yes, sir, I think I was there.

Q. Do you know whether he vacated them with his own consent by an agreement with the Commission? A. I do not.

Q. What year was it when the Howard house was torn down? A. I think it must have been 1879 or 1880.

Q. 1879 or 1880? A. Yes, sir; I think so.

Q. Speaking of the Leidig house, I think you stated that when it was torn down two of Leidig's boys occupied the place? A. They didn't

occupy the main hotel. They had the keys of the house. The house was locked up. They lived in a little house at the back of the main hotel.

Q. Do you know whether Leidig's family was residing in the valley? A. Leidig's family was not in the valley; they had moved out.

Q. Do you know under what circumstances they had moved out? A. They had sold out their good-will and their furniture.

Q. And the family had removed from the valley? A. And the family had moved; and there was a condition, I believe, in the sale, that they were not to resume business in the valley for ten years.

Q. Do you know whether the Yosemite Commission were parties to any such agreement, or whether that was an agreement between Leidig and other people in the valley, outside of the knowledge and connivance of the Commission? A. I don't think there was any connivance of the Commission in regard to it, but I don't think that any bargain could be consummated without their consent. I think that parties would ask consent of the Commission. I don't know that they did.

Q. That is a matter of opinion? A. Yes, sir; just a mere matter of opinion. I don't know that it would be necessary in that case.

Q. The question is, do you know whether Leidig made the agreement whereby he sold out and left, with the parties that he sold to, or whether he made the arrangement through the Commission? A. He made the agreement himself, certainly, with the parties that he sold to, and through them. I don't know that the Commission had anything to do with it.

Q. What were these boys that you say still remained there, doing? A. They remained there solely to hold possession of the property.

Q. For no other purpose? A. No.

Q. Did they follow any business? A. Well, they fished; that is the only thing that I know; I think Charlie Leidig fished there.

THE CHAIRMAN: Do you know of any cause for Leidig's selling out and removing? A. Well, he had a large family of children. I never heard him say, but I have heard others say, that he told them that it was for educational advantages, and for social purposes; that he wanted to get where there was somebody. And more than that, there has always been war there; and he thought that now the Stoneman House was built, that all the travel would go there, and that there was really no use for the three hotels; the travel would be split up so that he wouldn't get anything.

Q. Do you know any reason why the travel all went to the other houses, if Leidig kept an open hotel? A. I suppose that the Stoneman House had perhaps advertised a little better.

Q. Did the stage that carried these passengers to the Stoneman House pass anywhere near Leidig's hotel? A. Passed right in front of the door.

MR. TULLOCH: Was this house of Leidig's pulled down without any protest, or anything of the character? A. No.

Q. No protest of any kind? A. There was a protest; it was not pulled down without a protest; there was a protest.

Q. Who entered the protest? A. Charles Leidig.

Q. It was pulled down against their protest? A. Yes, sir; they forbade it.

Q. How did the Guardian get into the house? A. The Guardian took a crowbar and broke in the door, or started to break in the door, and the boy says, "Here, don't stave things to pieces." I believe he had opened one door with the crowbar.

Q. The Guardian did? A. Yes, sir; and then the boy says, "There is no use breaking all the doors open, here are the keys."

Q. Which one of the boys said that? A. Charlie Leidig.

Q. Then the work of destruction went on, did it? A. Yes, sir.

Q. How came Mr. Leidig to move out of the valley, did you say? A. He sold his good-will and furniture.

Q. His good-will? A. Yes, sir; that is, it was in the agreement, I heard him say, that they were not to do business there again for ten years.

Q. Heard who say? A. Leidig.

Q. Why should he not do business in that time? A. Because the parties who bought of him didn't want him to come in there and enter into competition with them again.

Q. Who bought him out? A. J. J. Cook and John K. Barnard.

Q. Did they have any relations with the present Commissioners? A. No; except that they leased property from the present Commissioners.

Q. There was a close relationship between Cook and the Commissioners, was there not? A. There was a close relationship.

Q. A commercial relationship? A. Yes, sir.

Q. Between Cook and the Commissioners? A. Yes, sir.

Q. Is it not true as a fact that he was frozen out of the valley and compelled to leave? A. No; he could have been there to-day if he had wanted to.

Q. Did you not say, a moment ago, that he was, in a degree almost, compelled to, or at least there was not much travel to his house? It went to the Stoneman House instead of his house? A. The Stoneman House never was opened while Leidig was there. It was not opened while Leidig was there.

Q. Not being constructed, either? A. It was being constructed.

Q. How soon after Leidig's departure was the Stoneman House opened? The Stoneman House was opened when Leidig left? A. Yes, sir, the Stoneman House was open; but, if you will permit me to say, the bargain was consummated before the Stoneman House was opened. Leidig didn't open his house for tourists, I am quite certain.

Q. The bargain was made? A. Yes, sir; the bargain was made in San Francisco during the winter.

Q. You said, awhile ago, that the Guardian entered the house under protest and broke the doors down? A. Yes, sir.

Q. Now you speak about a bargain being made, do you not, that he was to leave the valley on certain conditions? A. He was not to do business in the valley. I didn't say he was to leave the valley. That is, he was not to do a hotel business. Leidig one summer closed his hotel; they paid him so much not to keep open.

Q. Who paid him so much? A. I don't know; I think it was Cook and Barnard.

Q. Do you know anybody paid him any money? A. Yes, sir; I know they paid him so much to keep his hotel closed, and he kept it closed, and worked for the State there.

Q. Were you present and saw the money paid? A. No.

Q. Did you have actual knowledge of the fact? A. I have, from hearsay.

Q. You have no knowledge of it? A. No actual knowledge; no, sir.

Q. Did you not say he was paid some money? A. Yes, sir.

Q. How do you know it? A. I heard Leidig say so.

Q. You didn't know it as a fact? A. No.

Q. Then you don't know anything about it? A. I believe that I testified to the best of my knowledge and belief.

Q. I thought it was your own knowledge? A. To the best of my knowledge.

Q. What eventually became of Leidig? A. He is in Los Angeles now.

I saw him here the other day. I don't know that he is in Los Angeles; he simply told me so.

MR. GOUCHER: Mr. Atkinson, I believe there is only one question, and perhaps you have answered that. Did Leidig sell out and close up his house there before the Stoneman House was opened? A. I think he did. I am quite positive he did.

Q. Do you remember when the Stoneman House was first opened to the public? A. The Stoneman House was opened in the spring of 1888.

Q. That was last spring? A. That was last spring.

Q. When it was opened, do you know whether Leidig's family were in the Yosemite, or whether he was in the Yosemite? A. Mr. Leidig's family was there, certainly.

Q. Did he open his house at all during that season? A. No.

Q. When the Stoneman House was first opened? A. No, sir; he took no tourists whatever.

Q. You stated to Mr. Tulloch that there were some commercial relations existing between the Yosemite Commissioners and Mr. Cook? A. Yes, sir.

Q. What did you mean by that? A. I mean that he leased property from them, simply and solely.

MR. TULLOCH: Was there much travel in there before the Stoneman House was completed—was there much travel in the valley before the Stoneman House was completed? A. You mean heretofore?

Q. Yes; before it was done? A. In all the years gone by?

Q. Well, that season—the year before it was completed? A. Yes; there was very good travel that summer.

Q. All that time? A. Yes, sir.

Q. And up to the time of the completion of the hotel? A. Yes, sir; I think there was.

Q. It continued up to that time? A. That was a very good year. It was the year the Grand Army of the Republic held their reunion here, and that fall there was very good travel. It brought it out a very good year.

Q. You say this hotel of Leidig's was pulled down a little while before the Stoneman House was completed? A. I didn't say nothing of the kind.

Q. Didn't you testify that just now? A. I did not.

Q. What did you say? A. I testified that Leidig's hotel was simply pulled down.

Q. Before the Stoneman House was completed? A. I said nothing about before the Stoneman House was completed. It was not pulled down until after the Stoneman House was completed and was running, because I testified that Leidig was living with his family in the house after the Stoneman House was running.

Q. The Stoneman House was erected and going ahead before this was pulled down? A. Yes, sir.

[The clerk read the third charge.] A. I know of no wanton destruction of public or private property. I know of no wanton destruction.

MR. TULLOCH: Do you know of any destruction? Leave out the word "wanton." A. I know of destruction; I know of the destruction of these houses that I have spoken of as being torn down.

Q. You did know of their being destroyed? A. Yes, sir; I testified to that in that first question.

MR. CRAWFORD: You don't know of any destruction of timber? A. That would be another question.

THE CHAIRMAN: Your answer is, you know of no wanton destruction of property? A. I know of no wanton destruction of public or private property.

[The clerk read the fourth charge.] A. I know that there has been timber cut there. The question comes in there, what constitutes timber? There were trees cut there from two inches high, I suppose, to three hundred feet. Now, I want to know where the question of timber comes in.

THE CHAIRMAN: I should fancy the proper definition of that word would be anything that could be used in building houses?

MR. GARDNER: Anything that was fit for milling? Wouldn't that be called timber? A. I hardly think that, because there is a good many oaks that are not fit for milling. At the same time, they would be timber; a good many cottonwoods there, that is timber.

THE CHAIRMAN: Fit only for firewood? A. What I mean to say is, that there has been trees cut there from two inches high, all the way up; but what I want to know is about this wanton destruction of timber. You may go on and question me.

THE CHAIRMAN: Tell the committee what you know about the destruction of timber? A. Please read that question again?

[The clerk again read the fourth charge.] A. All timber that has been cut there has been cut for a special purpose. In regard to cutting timber for firewood, there has been no trees cut for firewood that were not dead or dying. I have cut a great deal there myself, and I know that I have been terribly provoked when I would find a tree that, in my judgment, ought to come down, and get the Guardian up to look at it, and he will shake his head and say, "No; I guess we will have to let that fellow stand." And I would have to go and hunt another one.

MR. TULLOCH: Did you continue this process year after year? A. The second season I went into the valley there was nothing for me to do; and another man and myself went and got a crosscut saw and a beetle and some wedges, and went around sawing up some old trunks of trees that had been cut down, and the limbs cut off and used for firewood. They had been cut down, I should judge, ten or fifteen years before, and nobody had tackled them; it was too much.

Q. How long did you work at that? How much wood did you cut? A. Cut about thirty cords out of those old trunks.

Q. What became of the wood? A. Well, we sold the most of it to John K. Barnard.

Q. Who sold the wood? A. I sold it, myself.

Q. Who gave you authority? A. The Guardian of the valley. These trees that I speak of now had been cut down, and the limbs chopped off and chopped into firewood, and the trunks left.

Q. You spoke awhile ago about decaying trees having to be cut down now and then. How often did you have to do it? A. There are trees falling down all the time and blowing down.

Q. If they fall down, they don't need to be cut down? A. If a tree blows down, you have to cut the roots out.

Q. You spoke about cutting trees down? A. Yes, sir. You asked how often. There has been year in and year out that I have not cut a tree; that is, there has been two and three years at a time, because I was doing something else.

Q. There were no trees cut down except those which were cut down which were decayed? A. No, sir; I don't say that. In one place, there were some trees cut to open a view through from John K. Barnard's to Yosemite Fall, and then there were a few trees cut to open a view to Cook's hotel. Then, about the Stoneman House there were a number of trees cut down that endangered the house, and some trees cut down to give a foundation for the house; the house was built where the trees stood.

Q. How wide was that swath of trees or line of trees that was cut down—grove of trees—about Barnard's hotel, and how long? A. Well, from Barnard's hotel it was probably, before a tree was cut down—no, by the way, I did cut some trees down several years before; some cottonwoods right on the edge of the river. Well, it was, perhaps, there forty to sixty feet.

Q. Speaking of this grove of trees, this line, this swath of trees that was cut— A. [Interrupting.] There was no line or swath of trees cut until after you cross Yosemite Creek, and get into the rocks that have come down. Then there was a swath of trees and brush cut from fifty to sixty feet wide.

Q. How long? A. Well, four hundred feet.

Q. How large were the trees? A. Well, as I say, from two inches to three feet in diameter, or from half an inch—I wouldn't hardly cut a tree half an inch, because it would not be high enough.

Q. That swath was how wide? A. From forty to fifty feet. I don't know this from my own knowledge, Mr. Tulloch, because I never measured it. That is my mere estimate.

Q. What becomes of all that wood? A. That wood lies there yet, the most of it; in this swath it all lies there yet, but a very little. I went in there in the employ of the State to cut some, and we couldn't find anything that would pay for cutting—oak, hardwood. It is in this swath. There is no swath until you cross Yosemite Creek.

Q. How many trees were cut, do you think, and how much wood would it make if it was corded up? A. I have not the slightest idea.

Q. Did you cut some of the trees? A. No, sir; I did not.

Q. How came you to know it was four hundred feet long and forty feet wide? A. I have been there several times.

Q. You have no knowledge how much wood it would make? A. No, sir; it would not make—well—

Q. How came you to know they were three feet in diameter and three hundred feet high? A. I tell you I don't know of my own knowledge; it was my judgment; I saw the trees there. I won't say there was not some that was more than three feet.

Q. And yet you have no idea how much wood it would make? A. No; I could go there and look the trees over and tell you exactly.

Q. You don't know whether it would make one cord or six hundred? A. Yes; I do know it would make one cord, and I know it would not make six hundred.

Q. Can't you tell, approximately, about how much it would make? A. No; I could not.

Q. You have no judgment in the matter? A. No; I could not begin to approximate it without going and looking at every tree; and nobody else could.

Q. Do you or do you not know of a grove of cottonwood trees cut down on the pasture near Barnard's place, in the State pasture? A. No, sir; I know of no grove of cottonwoods cut down; I know we thinned out a grove of cottonwoods.

Q. What is the distinction between thinning out and cutting down? A. Where you cut out, I consider you cut every tree; where you thin it out, you cut out for the—

Q. It is a mere technical distinction? A. No.

Q. What kind of a distinction is it? A. I simply say you can go and cut down a field of grain, and you can go and cut it out. Trees that came

down were certainly cut down, but there were more left than there was cut down.

Q. There was some taken out? A. Yes, sir; there was some taken out, and those that were taken down were pruned out.

MR. CRAWFORD: What was the object of thinning that grove out? A. For the purpose of general view, and because it was the State pasture, and it was coming up full. It was thinned out, and the young cottonwoods and willows were grubbed out of it. I will say in that respect, that in 1862, I was not there, but I have heard, the whole valley was flooded, and that the seeds of all kinds of trees and plants were spread all over the whole floor of the meadow, from wall to wall, and they have been coming up ever since; and when I first went in there ten years ago, trees that were little pines not more than four feet high and two or three inches through, are now trees that are ten inches through at the butt.

Q. When was that? A. I think that was the flood of 1862. I have been told by parties there that the flood of 1862 flooded the valley and spread these seeds all over the meadow.

Q. And they are now how large, do you say? A. I say there are trees that are ten inches through there now.

THE CHAIRMAN: Mr. Atkinson, will you give the committee the name of the Guardian of the valley who authorized you to cut wood and sell it to J. K. Barnard? A. Mr. J. M. Hutchings.

MR. ROBINSON: Don't you know of a grove of timber over in the State pasture? A. Across the river?

Q. Yes? A. Those were pines, if you please.

Q. Don't you know of a grove of cottonwood trees that the stumps stand there yet, some of them three feet through, that were entirely cut out? A. No. Since you have mentioned it, I remember—if that is a grove—there was a little slough hole stood around there.

Q. How big a spot was it? A. Well, I suppose that cut up into stove wood, those trees made, as we measure by the tier, four feet high and eight feet long, maybe about twenty tiers of stove wood, eighteen inches long. I will say that they were old cottonwoods; they leaned in every direction, and they were a perfect eyesore to everybody and everything in the valley, and they stood right out in the middle of the pasture.

Q. In your opinion? A. In my opinion; yes, sir.

Q. That was not the question I asked you. How much space of ground did that grove of cottonwoods occupy? About how much space of ground did it occupy? A. That occupied—well, they stood around the edge of a sort of slough hole. The slough hole might have been sixty feet long, and perhaps twenty feet across it.

Q. How many acres would that inclose? A. I don't think it would inclose but a very small part of an acre.

MR. TULLOCH: Do you use cottonwoods for wood to burn? A. Yes, sir.

Q. Do they use pine for burning purposes? A. Yes, sir.

Q. And do they use oak? A. Yes, sir.

Q. When this grove was cut down some time ago, sixty feet long and four hundred feet long, why didn't they sell it? A. It is right in the rocks, where you can't get it out. It is where the water comes down from the Yosemite Fall, and it would cost more to build a road—

Q. How did they get in? A. They walked in.

Q. Couldn't they get out? A. The wood is only worth \$2 50 a cord, and it would hardly pay them to cut it down.

Q. You consider the scenic grandeur would compensate them for cutting it down and cutting it out? A. I am sorry to say that I don't think my

judgment is very good; it does not compare with some people who pretend to be judges of scenic grandeur. There is a very fine view from Barnard's back porch of the lower fall when it is high: a very fine view.

Q. How much more view did you obtain by cutting those trees? A. You obtained a view of the whole lower Fall, or nearly the whole of it. The Fall goes over and strikes on a bench of rocks and then separates in every direction.

Q. How much additional view, augmented view, as it were, would you have; one third, or one tenth, or one hundredth part, or what, if any? A. There was certainly some.

Q. Are you certain there was some? A. I am certain there was some. I never estimated. You get a view of the Fall where the Fall strikes the rocks; where the bottom of the Fall strikes the rocks—you get a whole view of it—you couldn't see that before.

Q. When these trees fell there, did they fall one after another in numerical order, or fall all over one another in a heap, in those places? A. As a general thing, a man that is chopping the tree falls them the way they will go the easiest. I would remark that it is an out of the way place; nobody would ever go there. It is a terrible thicket in through there where these trees were cut down, and when the water is up you can't get there.

Q. Is the view any better in looking back from the Falls in the valley, when you get to the Fall, by reason of cutting away of the trees? A. Well, the people don't go up there to look back at the valley. It is to let people at the hotel see the Falls, without going up there.

Q. When you are at the Falls and look down, do you think things would look pretty well down there? A. I don't know that you can get up to the Falls to look through. Even if you were at the Falls, I don't know that you would notice or would see the trees.

Q. Do you know anything about that? A. No; I certainly don't know whether you could see through them. I am rather inclined to think you could not.

Q. Wasn't there some timber cut down to get a view from Cook's old hotel? A. I mentioned it; yes, sir.

Q. For the same purpose? A. For the same purpose.

Q. What year was that? A. That was in 1887, I think it was. There were not near as many trees cut out then.

Q. When did Cook move away from that hotel? A. He moved away in the fall of 1887. At the time he moved out the Stoneman House was not completed, and Cook had no lease of it.

Q. What was the idea of getting a view from the hotel which was so soon to be abandoned? A. I tell you that Cook didn't know he was going to get the Stoneman House. He had no lease of the Stoneman House. It was not completed. Cook might have kept the hotel there as long as that house could have been propped up.

Q. In what year was the application made for the Stoneman House? A. I don't know anything about any application for the Stoneman House. I was not interested, and made no application. I hardly see how an application for the Stoneman House could come in under the question of the destruction of the house.

Q. Don't you know Cook made an application for the Stoneman House in 1887? A. I don't know. He might have made an application before they contemplated building it.

MR. ROBINSON: What time in the year were those trees cut to give the view from Cook's hotel. What month in 1887? A. Well, now, I can't tell you without thinking where I was myself, and I have got nothing to show.

Q. Were they cut at the same time the trees were cut to give the view from Barnard's porch? A. Yes, sir; they were cut at the same time.

Q. Do you know what time those trees were cut? A. That is what I was trying to think.

Q. Wasn't it in June? A. I was going to say it was in the early part of the season.

Q. Didn't you read in the newspapers that Mr. Cook got the lease of this Stoneman House at the August meeting, 1887? A. I did not. I know Cook told me that he had no lease of the hotel in the spring of 1888.

Q. I want to correct myself. I don't mean the lease. Don't you know that his application was granted for the Stoneman House? Didn't you read that? That his application for the Stoneman House was preferred over the others, at the August meeting, 1887? A. I have read a great many things in the newspapers about Yosemite that I know are not so. I will tell you one thing, however: that I received a letter from the Guardian during the winter of 1887, telling me not to allow Mr. Cook to occupy the Stoneman House, or his men to occupy the Stoneman House, as he had no right to do so; that the Stoneman House was not even accepted. That was away late in the winter of 1887.

MR. TULLOCH: Were you in the valley year after year, all the time? A. No.

Q. What year was this swath of trees cut down? A. This was in 1887.

Q. Where were you at that time? A. I was in the valley. I can't tell you where I was from day to day. I was right there. I didn't work at cutting the trees down. I was trying to think.

Q. Do you know who did? A. If it is any satisfaction I can tell you some of the men's names.

MR. GOUCHER: When was this grove of cottonwoods cut that Mr. Robinson asked you about? A. That was cut in 1887. It was cut in 1887.

Q. Do you know why it was cut? A. It was cut to—well, to beautify the valley. That is what it was cut for.

Q. The other trees that you speak of as having been cut for the purpose of opening a view from Barnard's hotel; when were they cut? A. They were cut in 1887; I am quite sure they were cut in 1887. Mr. Robinson has kept on this swath of trees particularly. There were some other trees cut between the swath and the hotel.

Q. Was that for the purpose of opening this view? A. It was for the purpose of opening this view; yes, sir.

Q. What was the character of the trees? Were they sound trees or not? A. Well, those trees that they cut over through the swath, were all sound trees. They were all sound trees.

Q. Do you know about how many were cut? A. I couldn't tell you, Mr. Goucher. I couldn't tell you how many trees were cut through there.

Q. Were you left to your discretion in selecting the trees that would be cut, as foreman? A. I was not foreman at that time.

Q. Did you control the work or participate in the work? A. No, sir; I didn't have any control of the work until in September, 1887.

Q. Do you know who designated the trees to be cut? A. They were cut under the direction of Mr. Dennison. I don't know that he designated the trees. It was such an immaterial affair, going into a thicket and cutting a swath through it, that he just told them to cut. I know they would go back and look and see if they could see the Falls, and then cut such and such trees.

Q. If I understand you, that opened a view to what are called the Lower Yosemite Falls? A. Yes, sir.

Q. From Barnard's hotel? A. Yes, sir.

MR. TULLOCH: You don't know of any wood having been cut and sold there to parties in the valley? A. Yes, sir; I have cut it myself.

Q. Other than what you first stated? A. Yes, sir; if you hadn't branched off, I would have told you.

Q. How much? A. Well, I suppose the Commissioners have—the State had on hand, when I left, in the neighborhood of eighty cords of two-foot wood. They cut it into two-foot wood, but the most of it was cut out of trees that had been blown down years before, as we all call it, in the cyclone that happened up close to the Stoneman House.

Q. What kind of trees were those? A. Pine trees; all pine.

Q. I should think that they would work the others up in the swath as well as those over there? A. I have told you before that it would cost four times as much to get those trees out where that swath is as the trees would come to; moreover, they have wood enough, that was actually in the way up about that Stoneman House, to last for years, comparatively.

Q. How many cords would that make? A. That about the Stoneman House?

Q. Yes, sir? A. Cook cut up a great deal of it.

Q. How many cords? A. I don't know. Cook cut up enough to last him all last summer.

Q. Did he sell it to campers in the valley? A. No; he burned it himself.

Q. Sold it to nobody? A. No. Then there is another grove that I have seen a picture of the stumps in the paper; I don't know why that is not brought in. That was a grove of thick pines. I heard it mentioned in regard to the stumps, and I will say that the stumps were left two feet or two feet and a half high. They were left for a special purpose. There are young pines that I know of that have been cut down six years, and the stumps are in the ground to-day comparatively as solid as they were the day they were cut down. These stumps were left as an experiment, to see if they wouldn't rot quicker. These trees up about the Stoneman House lay on the ground for seven years—pine trees—and were then worked into firewood.

Q. Do you think the fact of these stumps remaining up there, as many feet high as you have said, have tended to beautify the valley? A. They have not been remaining six years. I said I knew stumps close to the ground that were solid to-day.

Q. They are there still? A. Yes, sir.

Q. Then they have been there six years? A. Yes, sir.

Q. They left these things to see if they would decay? A. I hardly understand you, and I think you hardly understand me. I say there have been trees cut in the grove, and they were cut close to the ground so that no stump should be left. The idea was at some time to plow this ground, and the experiment was tried to cut the stumps high, to see if they wouldn't rot quicker, and to save grubbing the trees out.

Q. What was their idea in plowing up the ground? A. The ground is fern land. It is a nice meadow, but it never has been plowed and never has been cultivated. It is a perfect mass of brakes.

Q. Did they have an idea of making a ranch out of it? A. I don't know that they had any idea.

Q. You said that they had an idea— A. They had an idea of plowing the ground. I know they have a lot of timothy in the tool-house. I don't know but what they intended to sow it.

Q. Then they contemplated making a ranch? A. I don't know that they did.

Q. What did they want to plow it for? A. To make a fine meadow.

Q. Can you make a meadow by plowing? A. By plowing and seeding.

Q. Does that beautify the place? A. Yes, sir; it does, in my opinion, very much so. I think a fine grassy meadow is much preferable to a thicket of pines.

Q. You said awhile ago they left those there as an experiment, did you not—those stumps? A. They left those as an experiment.

Q. Did you not also say they had an idea of plowing up the ground at some time? A. Yes, sir. It was simply to see if the stumps wouldn't rot. It was simply an experiment, because there is so much there that needs to come out, and that must come out; that if they could be cut down, and the stumps would rot in a year or two, it would save thousands of dollars, save grubbing.

MR. CRAWFORD: Why must they come out? A. Well, in my opinion, they must come out.

Q. Why? A. Because the valley is growing to be a perfect wilderness of brush and young pines. The only clear places in the valley are those that have been fenced and used as pastures. As I told you, the whole valley was covered in this flood of 1862 with the seeds of pines and cottonwoods.

Q. Are these pines you speak of young pines? A. Yes, sir; young pines. They are nothing more than about six or eight inches through at the butt. There was a great many more six inches than eight. They were all cut up into cordwood.

MR. TULLOCH: Did you measure those trees? A. I did not.

Q. How do you know they were six or eight inches? A. I cut a good many myself. They might have been five and three quarters inches or six and one quarter inches. When you speak of a tree six inches at the butt it is just an approximate.

THE CHAIRMAN: Mr. Atkinson, did Mr. Cook ever pay anything to the Commissioners for the wood he cut about the hotel and burned in the hotel, used in the hotel? A. I don't think he did. That is all they ever pay for wood, is what it costs to cut it.

Q. The Commissioners gave you permission to cut it? A. The Commissioners gave me permission to cut the trees, Mr. Rundell. If Mr. Cook didn't cut the trees and use them himself, the Commissioners would have to cut them up and haul them away, and they would have more wood than they had use for.

MR. GOUCHER: What were the trees that were cut around the Stoneman House cut for? A. Some trees were cut to give a chance to build a house, the foundation; other trees were cut to keep them from falling on the house; they endangered the house. Pine trees always make a tremendous litter of pine needles and cones around a house. Other trees were cut because they were scrubby, good for nothing things. I cut them myself, and I cut them because I thought I could get some trees that I could get something out of. I know of two or three trees that were as rotten as they could be.

Q. Were those rotten trees that you speak of of such a character that they were liable to fall in a storm? A. Yes, sir; they were liable to fall; and they were dead trees; they were eyesores.

MR. TULLOCH: Did you cut them because they were an eyesore, or because they were likely to fall down? A. I cut them for the wood I could get out of them.

Q. Then the eyesore had nothing to do with it? A. Not with me. I cut them by the order of the Guardian. The Guardian blazed every tree for me.

MR. GOUCHER: Don't you know it was at the order of the Commission? A. I will tell what I know—yes, I know that it was at the order of the Commission, because I had asked for trees and couldn't get them.

Q. Don't you know the Commission selected the trees that were to be cut? A. I know that the Commission went to the Stoneman House; I was not there; my partner who was with me was there, when you and Dr. May and somebody were there and blazed the trees.

Q. Now, had there ever been any visitation of a cyclone, or anything of that kind, that tore down trees, in that immediate vicinity? A. There had been in my recollection. Clarke came along while I was cutting wood one day and told me there had been another one once before that, and took me and pointed out to me dead trees.

Q. As to this one you know about? I don't care for the hearsay part of it. When did that cyclone occur? A. That occurred in 1879 or 1880.

Q. How far was that from the site of the Stoneman House? A. Well, the nearest tree was perhaps—the nearest pine tree that was down was perhaps forty yards. Most of the trees, however, were broken off about thirty feet from the ground.

Q. That is, those that were torn off by the cyclone? A. Yes, sir.

MR. TULLOCH: Do you think, after a cyclone passed through a place and left trees standing there, do you think there was any danger of their falling down on the passers by—the balance of them that was left? A. It was not on the passers by; on the house.

Q. It makes no difference in the danger of falling down. Now, take decayed trees? A. If no cyclone came along in that place—

Q. Did you not testify awhile ago that one reason why a large quantity of trees were cut down was because they were decayed, and likely to fall? A. No, sir; I did not.

Q. Did you not tell me you didn't know whether it was because they were an eyesore, or because they were rotten, that some of these trees were cut down? A. No, I don't think I told you that.

Q. Did you not tell me you heard other parties say that they were eyesores, but you didn't know anything about it? A. I don't think I told you anything of that kind. I have got my own estimation of what is an eyesore, and what is not; that is, as the term is used. I know that if I had my way, there would be lots more out of there.

MR. GOUCHER: The Stoneman House was built in the midst of a dense grove of large trees? A. Yes, sir; one side of it was a grove of very large trees.

Q. This swath of trees torn down by a cyclone was not a part of that? It was not immediately on the ground of the Stoneman House? A. No; right close to it. And, by the way, there was another, just such another tornado as that up at Glacier Point, here only two years ago. It piled trees, one after another, and made it perfectly impassable. That is two that I know of in that vicinity.

Q. Then isn't it true that the trees that were torn down by the cyclone were not torn down at a place where they would preserve the safety of the Stoneman House? A. No. The trees that were torn down would not preserve it, because they were away from the Stoneman House.

Q. Where the house was built, trees that were cut there were cut because of their liability to fall? A. Exactly. They might fall.

Q. In some cases, and in the other cases, because they were rotten? A. Yes, sir.

Q. And disfigured the house and the ground? A. Yes, sir.

MR. TULLOCH: Why wasn't the grove of trees cut behind Barnard's house; the one that grows up to the house? Why did they not cut the groves of trees behind the Barnard house for fear they would fall? A. The grove of cottonwoods?

Q. Yes. A. Behind the old Hutchings house?

MR. ROBINSON: Yes, sir. A. I really don't know. I have told Barnard a dozen times he ought to have those trees cut. I have sat there in the winter time and there is one tree behind that house that I have seen lean away from that house to the river. I would not live in that house for anything. I know Barnard's family lived there one winter, and they moved over to the other house. It is really dangerous.

Q. Whose attention did you call to that? A. I called John K. Barnard's. I called the attention of the man who lived there that winter.

Q. Did the Commissioners have knowledge of that? A. I don't know.

Q. Did the Guardian have knowledge of that? A. I don't know. He knows the trees are there.

Q. Did he have knowledge of that? A. I don't know that he had a knowledge of it. Allow me to say, that after those winds, I have seen the branches piled up that would come down off of those trees on the house, and pile up a foot deep, pine branches and cedar branches, in front of the house.

Q. Have you seen those things actually occur? A. Actually; yes, sir.

Q. Right at the time? A. No; I didn't see them at the time. I know that there was a strong wind in the night.

Q. What is the diameter of those trees? A. Oh, they are from two feet and a half to three feet, I think, some of them.

Q. Are not some larger than others; are some of the diameters not greater? A. There is a cedar tree that grows up to the house, that the diameter is certainly greater than that.

Q. Have you any idea of their age? A. Well, that is a question for scientists to decide.

Q. I ask you if you had an idea of their age? A. No, not in the least; they were there when I came there.

[The clerk read the fifth charge.] A. Well, in regard to burning shrubbery, there is no shrubbery in Yosemite Valley, as I understand shrubbery; nothing that is preserved and kept. If a dense thicket of pines is shrubbery, then there is lots of shrubbery there; lots of it; if patches of willow is shrubbery, there is lots of shrubbery there. Instead of burning shrubbery, we have exercised the utmost care to prevent fires. Several fires have got out, and we have mustered all hands and fought them to our fullest ability. I know that there has been brush that has been cut. I know that where we have grubbed up about the Stoneman House, I know that the stuff has been burned there. I know that when the Stoneman House—before they started to lay the foundation, they put a fire into a little clump of trees there and burned that out; little, small pines. What was the last part of that charge?

THE CHAIRMAN: "And allowing persons to do the same for their private gain." A. That was in regard to plowing meadows, but they would not burn shrubbery for their private gain.

MR. TULLOCH: Do they plow meadows for their private gain? A. I really don't suppose they plowed them for fun.

Q. That is not the question. Did they plow them for private gain? A. They plowed them to raise hay on.

Q. What did they intend to do with the hay? A. They intended to feed it to their stock.

Q. And to feed it to other parties' stock? A. If they could sell it; yes, sir; doubtless.

Q. Don't you think they did sell it? A. Of my own personal knowledge I don't know if there ever was a pound sold.

Q. You don't know whether they plowed land up for their personal gain or not? A. I don't know it. I know the land has been plowed. I know the Commissioners—

Q. Didn't you just say they plowed it up for personal gain? A. You asked me if I didn't know.

Q. I asked you if you didn't know? A. Of course I don't know. They plowed it, and they seeded it, and whether it was for fun, or whether it was for private gain, I don't know anything about it.

Q. Did you not tell Mr. Rundell now, when he asked you about fires or doing something for private gain, did you not say that that related to plowing up the lands for private gain? A. I was answering in regard to burning shrubbery. Then says I: "What is the latter part of that?" and he says: "For their private gain." I says: "That relates to plowing lands." That is the last part of that clause.

Q. That is an intimation that they plowed the lands for private gain? A. Not at all. I have heard this question read here half a dozen times last night, and I simply mentioned that the private gain clause came in on the plowing of the land.

Q. Did they plow the land for private gain? A. Of my own knowledge I don't know anything about it. I know simply that the land was plowed. If you won't be quite so technical, perhaps I can answer a little more intelligently.

THE CHAIRMAN: I will read you the question in full again.

[The Chairman read the fifth charge.] A. Well, is that allowing them to burn shrubbery for their private gain? Does that come in there? Is it altogether, or is it plowing land for private gain?

THE CHAIRMAN: Well, what do you know of plowing up meadows, or allowing persons to do so, for their private gain? A. I know that the meadows have been plowed there, and in my opinion it has been of great benefit to the valley; just as much as it is, or more so, for private gain.

Q. And also for their own private gain; for their own private purposes? A. Well, that is technicalities, I should call it.

THE CHAIRMAN: I see nothing technical about it. A. I will tell you, Mr. Rundell. Mr. Harris has worked a ranch there; the land has been plowed; gardens have been planted there; fruit trees have been planted; hay has been raised there.

MR. TULLOCH: Did that help the general public or private parties? A. Both.

Q. Didn't it help the private parties more than it did the public? A. I will tell you; I have known Coffman & Kenney to have their stable there with not a spear of hay in it, in the height of the season.

Q. Did this thing inure to private profits? A. I don't know anything of my own personal knowledge in regard to that private gain part.

THE CHAIRMAN: Who did gain by it? A. Everybody gained by it; there was hay raised there to sell to campers; there was hay raised to feed stock that was in there.

Q. Who did this plowing? A. J. J. Cook has plowed, and Leidig has

plowed, and Harris has plowed. Coffman & Kenney have plowed, the Guardian—the State force—has plowed.

Q. All those parties had stock of their own to feed? A. Yes, sir.

Q. How much did Coffman & Kenney plow? A. They have got about ninety acres seeded this fall; they had, when I came out; I don't think they plowed any more.

Q. Well, they sell hay and barley? A. They sell, and they feed.

Q. And the natural inference is that it is done for private gain, isn't it? A. I tell you here is the private gain: this property that they plow is property that they lease from the Commissioners for that purpose.

MR. TULLOCH: The benefits then accrue to the parties who have leased the ground? A. Yes, sir.

Q. They are private parties—that is not the public—it is not you and I and Tom, Dick, and Harry, is it?

MR. GARDNER: Does the State benefit by it? A. Yes, sir; the land is leased; there is rental paid for it.

THE CHAIRMAN: The last part of that question is: "Thereby doing irreparable damage to the natural beauties of the valley." A. No; there is no irreparable damage done to the beauties of the valley, nor no damage done that is not irreparable, either. There is no damage done, either irreparable or not. In 1880 (in regard to this cutting) I was living there, and on Sunday I was in my little camp out there, and Mr. Griffith, from San Francisco, a steamboat man, came there to the cabin and wanted a drink of water, and I gave it to him, and got talking with him; and he said, "How is it they don't cut some of these trees out of this place?" I says, "That is the very thing they don't try to do." He says, "Mr. Perkins is my partner, and when I go down, I am going to see him, and see if I can't get some of these trees cut out. A man has got to go a way out of the middle of a cow pasture to see anything."

MR. TULLOCH: Could you get there now if you wanted to? A. Where?

Q. Where these cow pastures were? A. Yes, sir; there is a trail through there, and turnstiles.

Q. Wouldn't you have to cross fences? A. No; cross no fences; there are turnstiles.

Q. Could you get there with a horse? A. No; you couldn't get there without opening gates.

Q. If there were no fences, could there be gates? Do you tell me that there are no fences? A. I didn't say that there were no fences. I said they could go there without getting over fences, through the turnstiles.

Q. They would have to go through fences? A. Through these turnstiles that are put there for the express purpose.

Q. There are fences? A. There are certainly fences. Everybody knows that that has been in the valley.

Q. What is your idea of damage; irreparable damage or damage of any kind? A. Irreparable damage means, to me, damage that cannot be repaired.

Q. In relation to the valley? A. In relation to the valley—irreparable damage in relation to the valley—I should say that if Agassiz Column was toppled over, which is a rock which stands by itself, I would say that is an irreparable damage.

Q. If eighty or ninety cords of wood are cut in the valley, and taken out and sold, would that be an irreparable damage? A. No; but a positive benefit—a public benefit.

Q. And if that money went into the pockets of the parties who leased

the land, that would be a public benefit, would it? A. Without regard to money at all.

Q. You said these places were covered over and some pastures in there. Don't you think the destruction of these lilies and these nice beautiful romantic spots, and all this sort of thing, and picturesque scenery, don't you think the destruction of those was irreparable damage? A. I don't know. Well, there are some lilies growing there; this Mariposa lily grows there all the time.

Q. Don't you think those things were damages; the destruction of them? A. There are thousands of them in every direction, Mr. Tulloch. I suppose that one, possibly, out of one hundred thousand that would grow in the valley, has been plowed up. You go anywhere else and you will find them. Of course there is a good many flowers that did grow there that don't grow now; that have been eaten up by the stock.

Q. And a good many plowed up? A. A portion that have grown on the land, that would have been left, has been plowed up. Allow me to say that these parcels of land that have been plowed are out of the way of where a foot passenger would want to go; and wherever a foot passenger wants to go there has been an opportunity for him to go through a turnstile.

Q. There has been a fence put up? A. The turnstiles are in the fences.

Q. You can't go there with a horse unless you jump the fence, or went through the gate? A. No.

Q. Then there has been an irreparable damage, has there not? A. No; decidedly not.

Q. You don't regard those things as damages? A. I don't regard it as a damage because you can't go in a certain place with a horse; no.

Q. The plowing up of the valley, the destruction of the flowers and the beautiful places? A. They have destroyed no beautiful places. I fail to see how plowing up a piece of land will destroy a beautiful place. All the quiet nooks and corners, which I suppose you bear in mind, are on the sides of the valley.

Q. They are hanging on the sides of the cliffs, I presume? A. All right; I can find some quiet nooks hanging on the sides of the cliffs.

[The clerk read the sixth charge.] A. Well, land has been fenced there; land has been farmed there ever since—I don't know how long. It is nothing that these Commissioners have inaugurated.

MR. TULLOCH: Have these Commissioners indorsed it? Have the present Commissioners indorsed it? A. I don't know. It has been done. I don't know whether they have indorsed it.

Q. Was it done under the present regime of the Commissioners? A. It has, some of it; a very small portion of it.

Q. Have those dimensions not been enlarged and increased? A. Not very greatly.

Q. Have they been at all? A. Yes, sir; I think they have. I may say that they have been.

Q. How many acres would you think had been added to the inclosures? A. I don't know. There has been a field of, I should say, about twenty-five acres fenced at the new hotel.

THE CHAIRMAN: Who fenced that? A. That was fenced—

MR. TULLOCH: Doesn't one of those fences run right up to the road, sir, one side of one of the fences? A. One side of one of the fences starts from the bridge and runs up—built right on the edge of the wall. That would be positively a benefit. It is built on the edge of the wall and goes up for, well, one hundred and fifty yards along this wall, and then turns

off around and comes out around the Stoneman House, and then comes back to the road again and goes along two hundred—

Q. Does it run along the side of the road? A. Yes, sir.

Q. How far? A. Two hundred and fifty to three hundred yards, I should say.

Q. How near to the roadbed? A. Well, I don't know how near to the roadbed; it is just outside, possibly six or seven or eight feet.

Q. You spoke of these additions that have been made; you said twenty-five acres had been made in one place; you didn't get through. Were there any other additions? A. There was a piece fenced in down by the Guardian's office, possibly four or six acres.

Q. Any other additions? A. Between Yosemite Creek and Stony Point, there is a fence running down the road.

Q. We are speaking of enlargements; additions to the original inclosures or ranches? A. That is not much of an inclosure, because the fence is all—

Q. How much of an inclosure, sir? A. I couldn't tell what it is; it is all grown up.

Q. How long is that fence? A. Well, that fence is half a mile, I guess. I don't know that it is as long as that.

Q. Has that fence been run there latterly? A. Yes, sir.

Q. Under the present regime? A. Yes, sir.

Q. How large an area does that inclose? A. Well, it is simply a fence from a creek. It is a very irregular piece of land. The creek runs and turns and crooks. I couldn't begin to tell you. It is a thicket, most of it.

Q. How large a piece of land do you think it incloses? A. I wouldn't begin to estimate it.

Q. Is it one acre or a hundred? A. Well, it is more than one acre; I don't know as it is one hundred.

Q. Seventy? A. Well, I couldn't tell you that.

Q. Sixty-five? A. Well, I can't tell you at this time. If I would go there, perhaps, and walk it over, and stake it off—

Q. How is it you know considerable about the cutting of trees, and that sort of thing, and about the diameter and conditions under which they were cut, and yet you don't know anything about the land inclosed? A. Well, I do know about the land inclosed. Here is a piece of land, Mr. Tulloch, of all kinds of shapes and dimensions; here it is perhaps ten feet wide, and in another place it is one hundred and fifty.

Q. Do you think there are fifty acres in it? A. Well, possibly there may be fifty acres in it.

Q. Wouldn't there be sixty acres? There are twenty-five in there, and fifty in another; that is seventy-five; and five in another; that is eighty. They have been inclosed under the present regime, have they not? A. Yes, sir.

Q. Did you testify awhile ago that very little increase had been made under the present regime? A. I did not.

Q. I understood you did. I asked you if there had been any additions made, and you said but very little. A. I think that eighty acres is very little. I will admit that eighty acres has been inclosed. It is a very small proportion in regard to the amount of land in the valley.

Q. There was nothing said about it comparatively. You spoke about it absolutely. A. A little here and a little there. It don't amount to anything.

THE CHAIRMAN: All that fencing has been done by private individuals?

A. Oh, no; this fence that he speaks of, this long fence, was run by Coffman & Kenney.

Q. I say, by private individuals? A. That fence, this new fence that is there, was made by the State.

Q. Coffman & Kenney had a lease from the State? A. I presume so. I run the fence; the most of it. Coffman paid me for it.

MR. TULLOCH: You had a wire fence up there? A. Yes, sir.

Q. Is that picturesque? A. I don't know that it is absolutely picturesque, but it obstructs the view much less than any other fence you could put up.

Q. Is it not a barbed wire fence in more senses than one? A. Most fences put up there are two wires and two pine poles; two straight poles with the bark off.

Q. There is a barbed wire fence? A. All right, it is a barbed wire fence, two wires and two poles.

Q. Do you think it is pleasant for a young lady or an old lady or any other kind of a lady to come along and have her dress torn off? A. If the young lady or old lady climbs the fence she may get her dress torn off.

Q. You think that is improving the park? A. I think it is the least conspicuous of any fence.

Q. We are not speaking about it comparatively, but absolutely. Is it an improvement? A. I would prefer that there were no fences, but if there has got to be a fence, that that fence is the least conspicuous of any fence you can put up.

Q. In an artistic point of view, how is it that way? Does it add to the romance of the place? Would people come from the Eastern States to get a look at it? A. They would not, and they won't see the fence if they are standing by a cliff five thousand feet high and looking up five thousand feet.

Q. Is it right for the Commissioners to make a trap for me to go across and get torn to pieces? A. You have no business to get caught.

Q. Some geologists who may be there for the purpose of examining the nature of the trees, the sequoia, and all that sort of thing? A. There is no charge for a geologist to examine the floor of the valley and those meadows.

MR. GOUCHER: Who did the fencing near the Guardian's office; you spoke of four or five acres being inclosed there? A. The old fence inclosed most of it, except one stretch along the road.

Q. How long has that old fence been there? A. The old fence was there when I came there. From information, most of that fence was put there by A. G. Black and Marcus Hedges.

Q. How long ago? A. Well, that is more than I know. It was there when I came there.

Q. When did you first go to the valley? A. In 1878.

Q. Was it an old fence at that time? A. It was an old fence at that time.

Q. Do you remember whether Lemmon's orchard near the present Stone-man House was inclosed the first time you went to the valley? A. That was inclosed at the time I went there.

Q. About how many acres? A. About six acres.

Q. Do you know where Hutchings' house is? A. Yes, sir.

Q. Was any territory about that house inclosed at the time you went to the valley? A. Yes, sir; that was all fenced up around there.

Q. Do you know where the Harris farm, the Royal Arch farm, is? A. Yes, sir.

Q. Now leased by Coffman & Kenney? A. Yes, sir.

Q. Was that or any part of it inclosed at the time you first went to the valley? A. Yes, sir; that was all inclosed. There were more fields at the lower end of the valley inclosed when I went there.

Q. Are those fields in existence now, at the lower end of the valley, that were inclosed when you went there? A. Yes, sir.

Q. The new fencing that has been done near the Stoneman House, who did that? A. The State men did it. I presume it was done by the State.

Q. By order of the Commissioners? A. By order of the Commissioners.

MR. TULLOCH: Do you know it or presume it? A. I know it was done by order of the Commissioners.

Q. Then you don't presume it? A. No; I know, because Chapman was there, and ordered the fences put up.

MR. GOUCHER: Do you know what that inclosure is used for? A. Yes; it is used for cows.

Q. Cows belonging to whom? A. Cook.

Q. Used in connection with the hotel? A. Yes, sir; used in connection with the hotel.

Q. The way you answered Mr. Tulloch, I understood you to say that there were about four acres of new ground had been inclosed near the Guardian's office? A. Well, that land was not inclosed. There was a fence on two sides of it, and on at least half of the other side; that is, a lot abutted on it—this Elizabeth Glynn lot—and there was a little gap there of forty or fifty yards, across which the fence was put.

Q. That is, in other words, it required, in order to make the inclosure complete, the construction of a fence of about forty yards, across an opening? A. Yes, sir, and the river was on the other side.

Q. The rest of the fence was all old, wasn't it? A. Yes, sir. Allow me to say these fences have been constructed with the utmost care. Every post is in line; the top of every post is just so, every pole; and every wire is stretched as straight and level as it can be.

Q. That is something I don't care about? A. The fences are made as artistic as possible.

Q. What I wish to ascertain further is this, for what purpose was that fence run, or that inclosure completed? A. That fence—the State stable is in that inclosure.

Q. Explain to the committee what you mean by the State stable? A. The State has two mules and a saddle horse for the Guardian. The State stable is in that inclosure, and the State teams, and the wagons, and the carts, and everything has been kept in there.

Q. What was the other fence run for that you spoke of? A. I think that piece was leased to Coffman & Kenney for their saddle horses. It was for them to pasture their stock, to keep them from running at large in the valley. They had inadequate pasturage.

Q. That is, if I understand you, this fence that Coffman & Kenney run was for the purpose of preventing their horses from running at large? A. Yes, sir.

Q. When was that constructed? A. That was in the spring of 1886, I think.

MR. GOUCHER: There is one question here which is not touching the question under discussion, but I want to ask it now because I will be compelled to ask it later or at some time. At whose instance did you come here as a witness? A. Well, I received a notice from Mr. Meany requesting me to appear before the Senate Committee.

Q. Had you ever been notified in regard to the matter prior to the time you received that summons? A. Mr. Robinson told me in the valley,

when I quit or was discharged from the State, that I had better write out a statement and send it to the "Examiner." I told him that I had no grievances which I wished to air, and he said the "Examiner" aired nobody's grievances, but if I ever expected to have anything more to do with Yosemite, or with Yosemite affairs, I had better write to the "Examiner," and that I would, in all probability, be summoned before a committee of investigation at the Legislature next winter.

Q. When did he say that? A. He told me that in the valley.

Q. When? A. Well, that was in the month of September.

Q. Did you give him a statement? A. I gave him no statement. In talking with him, he asked me why I quit, and so on and so forth, and I naturally told him.

Q. But did you make any statement further than that; any written statement? A. No; no written statement.

Q. Did you ever have any further communication with him in regard to the matter before you were summoned? A. None whatever.

Q. Do you know whether your statements, as made to Mr. Robinson, ever appeared in the "Examiner?" A. I know that some of them did; yes, sir.

Q. As you stated them to him? A. Well, I think so. I think they were about as I stated them to him.

Q. Do you remember when they appeared? A. No, sir; I do not.

Q. What month? A. I do not, sir. I couldn't tell you. I remember getting the paper and reading it over to see them. Somebody told me that they were in the paper, and I borrowed the paper to read it.

Q. Well, after that did you have any further communication with anybody in reference to these matters, up to the time when you received this notification from Mr. Meany? A. No written communication.

Q. Any other kind of a communication? A. No, sir; I think not.

Q. Written or verbal? A. No, sir; I had no communication with anybody.

MR. TULLOCH: How many cows and cattle were confined in those pastures of which you spoke awhile ago? A. I think Cook had thirteen or fourteen.

Q. Were those ranches and pastures for the purpose of keeping their stock and horses and so forth from running out upon the commons? A. Yes, sir.

Q. Very well. Why, then, that being the case, didn't Coffman & Kenney, when the Commissioners insisted, keep their stock in? A. I don't know. I know that the Commissioners have insisted that Coffman & Kenney should keep their stock up. I know that there has been a great deal of trouble about it. I know that the horses broke out of the pasture, and I know Clarke upon one occasion—I think that Coffman & Kenney were authorized to run their horses at the lower end of the valley, under the charge of a herder, until there was enough feed in this pasture for their horses. They complained that their horses were actually starving, and that they would have to take them up and feed them; that there was no pasturage for them; and they were allowed to turn their horses out under the care of a herder, on the north side of the valley, at the lower edge—below the iron bridge, I think; it is a matter of record, I know.

Q. Didn't they run them up into the campers ground, above Barnard's bridge, this summer? A. I don't think I ever saw a loose horse of Coffman & Kenney in the campers pasture.

Q. Would you have seen them if they had been there? A. If I had been there and the horses had been there.

Q. You would naturally have seen them in your daily work and routine; you would have observation; you would have known it? A. I would not, unless my work took me there.

Q. You would naturally have known it? A. No; I would not have known it. There might have been a horse or a dozen horses there, and I wouldn't know anything about it, unless I was there.

Q. You don't know whether they were there or not? A. No; I know that there were some horses up about the Stoneman House; I know that they were a great trouble to Cook. Every morning there would be three horses there, and Cook would send down to Coffman & Kenney, and they would send up and drive them back, and the next morning those horses would be there again. They were a great annoyance to him. They would break out of corrals, and jump out of fields, and they are bound to get away if they can.

Q. No such thing as keeping them in, I presume? A. Of course, you can tie them.

Q. All that adds to the beauty of the place? A. All right; if you think so.

[The clerk read the seventh charge.] A. I never heard of it until I heard the charge read here. I never knew of the charge. I have heard complaints. I know that Mr. Dennison made a great many enemies there simply because he enforced the rules of Commissioners there.

THE CHAIRMAN: You know nothing of this charge whatever? A. I know nothing of the charge whatever; never heard of the charge.

[The clerk read the eighth charge.] A. I never heard of anybody being evicted from the valley. I know that there are rules and regulations that forbid the residence of improper or immoral persons. I don't know that anybody was ever forbidden to live there. What was that about connivance, if you please?

[The clerk again read the eighth charge.]

THE CHAIRMAN: Answer that question. A. I know nothing about any connivance with anybody.

[The clerk read the following portion of the eighth charge: "And to evict other residents, and debar the general public from just and legal use of the valley."] A. The general public is not debarred.

THE CHAIRMAN: Do you know of anybody ever being turned out of the valley? A. Yes, sir; I know of one man.

Q. Who was that man? A. That man's name was John—what was his name, Mr. Hutchings—that teamster, if you remember?

MR. HUTCHINGS: John Blackburn? A. That is the man.

THE CHAIRMAN: What did they turn him out for? A. He was turned out because he was a thief.

MR. TULLOCH: Do you know he was a thief? A. Yes, sir; I know he was a thief.

Q. Of your own knowledge? A. Yes, sir.

Q. Did he ever steal anything? A. Yes, sir; he stole from Mr. Hutchings.

MR. GOUCHER: This is a new man to me; who was this Blackburn? A. John Blackburn was a teamster who came in there when Mr. Briggs was Secretary.

MR. HUTCHINGS: Sent by him. A. Sent by Mr. Briggs; he sent in two men. One was discharged by Hutchings for abusing the animals and the other man took the team.

MR. GOUCHER: Mr. Briggs was a preacher, was he not? A. I think he was.

Q. When did that occur? A. That occurred in 1881 or 1882—1881.

Q. How was he removed? A. When Mr. Hutchings' wife, I think, was buried. This man's father was an undertaker, and he took sort of charge of the ceremonies; and when the funeral left the house he stayed at the house and he went through everything; that was just the amount of it, and he stole from everybody, as the supposition was. They didn't know how to get at him, and when we were finally on the team to go out, all hands, the Deputy Sheriff came with a search warrant to examine his effects. His effects were searched and certain things were found, and he was ordered to leave the valley; I guess given an hour's notice to leave the valley immediately, and I know he struck out on foot right away.

MR. GOUCHER: You will pardon me for asking this question; it don't throw any light on the issues, but I did it because the name is new to me, and I don't know anything about the man. A. That is the only man that I know was ever turned out of Yosemite Valley.

[The clerk read the ninth charge.]

MR. McLEAN: I think it ought to be said right here that Mr. Briggs didn't know the character of the man, or he would not have sent him there. Mr. Briggs is an old acquaintance of mine, and he couldn't have known the character of that man.

MR. GOUCHER: I made a jocular remark. I presume it will be so understood.

THE CHAIRMAN: The committee understood it that way. There is no intention to disparage the character of anybody.

[The clerk again read the ninth charge.] A. Well, I know of this C. O'Donnell incident, and I heard it mentioned before that it was black paint that was used to paint out his name. It was paint as near the color of the rock as we could possibly get; and I heard, at the time, they refused to prosecute him for the simple reason that he simply did it for notoriety, and said that he wanted them to prosecute him.

THE CHAIRMAN: You know of no other case? A. No other case where there has been any disfigurement that I can remember of. I don't think there has been any. I never saw any. I know that names are cut, but nothing so prominent as "C. C. O'Donnell."

MR. GOUCHER: You know that no names of persons as prominent as Dr. O'Donnell were written? A. No names written as prominently, perhaps, or in any such prominent position. I don't know that there is anybody that is as prominent, perhaps.

THE CHAIRMAN: Would the cutting of those names have a tendency to destroy the natural beauties of the valley? A. No; they were mostly painted on rocks—at Register Rock—it is a great place for painting names. There are a great many names registered on a big rock on the trail, and on the bridges you will see names penciled.

MR. TULLOCH: The valley is not at all disfigured in any other manner, is it? A. Yes, sir; it is disfigured by this underbrush and young pines.

Q. Do you call that a disfigurement? A. I certainly do; yes, sir.

Q. I thought from the testimony that was given the other night that the underbrush and pines—the pines were thinned out from year to year, as the occasion might require, and the underbrush was collected and burned, or placed away? A. That is what should be done.

Q. Is that not a fact, sir? A. That it has been done?

Q. That it has been done by the Commissioners? A. Only in a very small proportion of the valley: a very small proportion.

Q. Why wasn't it done? A. Because, in the first place, we never have

had means to do it; never had money to do it; and we have always had so much other work to do—making roads and building bridges.

[The clerk read the tenth charge.] A. I don't know anything about that: nothing whatever.

[The clerk read the eleventh charge.] A. Well, now, the grant extends a mile, all around, back from the valley wall, and the contractor's mill is just outside the extreme limit of the grant; just outside the extreme limit; that is, a little back from the edge. That is, I say it is; I don't know that it is, but I know that the stake has been pointed out to me—"That is the corner of the grant right there," and that the mill is still higher up the hill. Now, I had the impression—I have ridden along there several times since the mill has been there, and I thought then, as I looked from the road up, that there were about three trees fallen that would come on to the grant, I supposed. I don't know where the line runs, and have not the slightest idea where the line runs; but my impression was that they were a little nearer—the line might have angled down the hill. It was my impression that three trees were in the grant. They located two quarter sections, I think. I saw the notices published in the paper; and they cut the timber and hauled the lumber to the Stoneman House.

MR. CRAWFORD: You don't know but what there may have been more than three trees? A. I don't know but what there may have been more than that. I don't know that there was that. I know that they located timber. It is a large pine forest, and it is away up on top of the hill. It is not in the valley.

MR. TULLOCH: Who located the timber? A. I can't tell you whether it was Mr. Carle, Mr. Croly, or Mr. Abernethy. I know that I saw the notices in the "Mariposa Gazette."

Q. Where do they reside at? A. At Sacramento.

THE CHAIRMAN: Were those gentlemen the contractors that built the hotel? A. Yes, sir; I saw the timber notices in the paper.

MR. TULLOCH: How many trees did they cut? A. I could not tell you; I have no idea.

Q. How many do you think? A. I can't think about it, because I don't know anything about it; have not the least thing to form an opinion from.

Q. You knew the forest was located? A. Yes, sir.

Q. You knew where it was? A. Yes, sir.

Q. You knew about where the line run? A. No, I don't know about the line.

Q. You knew about these three trees? A. I knew about those, because I could see them by passing the road.

Q. You could see the forest, also? A. Yes, sir.

Q. You don't know whether they cut the trees or not? A. I do know they cut the trees.

Q. How many do you think? A. I have not the slightest idea, because there is an immense forest up there, and it is hills and gulches. You can see where they have hauled them, and I saw them hauling the trees down off of the hill.

Q. How long did they continue in that operation—a month? A. Yes, sir: they were four months, perhaps.

Q. They were hauling trees down during that time? A. I don't know.

Q. What did you see them hauling down? A. I saw them hauling a sawlog on the truck with an ox team.

Q. You saw them hauling timber down? A. Yes, sir.

Q. They did that three or four months? A. I don't know.

Q. Didn't you say they did? A. I say that the mill was running.

Q. Very well. The mill ran on trees, didn't it? A. I expect it did.

Q. And they got it in that place? A. Yes, sir.

Q. From that forest? A. Yes, sir.

Q. Running three or four months, in that length of time, with wagons coming down, how many trees do you suppose that would amount to? A. I don't know anything about it. But allow me to say, about running three or four months, that they had shingle machines, planing machines, and molding machines.

Q. It all had to come out of the trees? A. Yes, sir; and they had to saw the lumber and plane it.

Q. It all came out of that forest? A. Yes, sir.

Q. That is above the valley? A. Yes, sir; there is a tremendous forest there yet.

Q. It makes no difference about that; there is not so much as there was? A. No; I couldn't say anything about the trees.

Q. It was enough to keep the mill running for four months at least? A. I will tell you pretty near how many thousand feet of lumber. I can't either. I thought I remembered how many thousand feet there was in the hotel.

MR. GARDNER: That was not on the grant, was it? A. No.

MR. TULLOCH: Did the contractors do it on their own authorization, or were they authorized so to do by the Commissioners? Did they do it on their own responsibility? A. Do what?

Q. The parties who hauled the lumber down. The parties who hauled their timber down; were they authorized to do it by the Commissioners? A. The Commissioners had nothing to do with it. The Commissioners had nothing to do with building the mill or the sawing of the lumber or anything else.

THE CHAIRMAN: You think they only cut three trees within the limits of the grant? A. I don't know that they cut that. I don't know that there was a tree cut.

MR. TULLOCH: Did they blow down? A. I don't know that they blew down. I don't know who cut them down; I don't know that the sawmill men cut them down; I don't know that. I know that the trees were cut down.

Q. You knew that they were cut down? A. I knew that they were cut down. I don't know that the sawmill men cut them.

MR. GARDNER: You thought it might be on the grant? A. I thought possibly these three trees were on the grant. It is nine miles at least from the Stoneman House to where these trees are.

Q. Carle, Croly & Abernethy got these two quarter sections under the timber Act? A. Yes, sir.

Q. They were cutting their own timber? A. Cutting their own timber, certainly.

[The clerk read the twelfth charge.] A. Well, I know that there are no exclusive privileges in the valley; no one is debarred from anything. I know that there is nothing—nobody is debarred from anything, as I understand an exclusive privilege. You can come in there with a horse and ride wherever you want to. You can come in with your carriage and ride wherever you want, although, at the same time, there are carriages there for hire; there is a general livery business. I don't suppose you could come in there and be allowed to start a livery business or hire a carriage out or run it. And then in regard to the stores: you can get anything; anybody can come in there and peddle anything, sell anything that they want to, beef—there is a butcher shop there—a butcher has a privilege of keeping a butcher shop.

I know that a great proportion of Cook's beef comes in from the outside. I know that Barnard this fall has butchered a good many of his own cattle. I know that there has been beef in there peddled from the outside. I have seen McCauley, who has a little ranch outside, come in and peddle beef. I don't know of any exclusive privileges, as I understand exclusive privileges. I certainly don't know of any exclusive privileges.

THE CHAIRMAN: The Commissioners allow one party to rent out carriages? A. Yes, sir.

Q. And if I went there with my carriage, they would not let me hire it out? A. I don't think that the laws of the State would allow you to hire it out, would they? They would not allow you to do it.

MR. TULLOCH: Would the exclusive privilege men allow you? A. I don't know how they would stop you.

Q. That is not the question. Would they have a desire to? A. If it injured their business, they certainly would desire to stop you.

MR. GOUCHER: You say you think these exclusive privilege men, so called, would have a desire that you should not hire out a carriage if you went in there? A. Yes, sir; I think so. They pay so much a year for doing a livery business, and I think they would be opposed to anybody's coming there.

Q. They would be opposed to them, to anybody coming in there, who didn't pay the State for the privilege, and competing with them who are paying? A. Why, certainly, they would; yes, sir.

Q. That is a matter of inference on your part, isn't it? A. Yes, sir.

Q. Have you ever known of a case of that kind to arise there during your experience, where outside parties, who were not paying for the privilege, came in and undertook to offer, for hire, wagons or horses? If you know of any such case, just state when it occurred? A. I really don't know of any unauthorized party endeavoring to hire out carriages. I don't know that anybody ever did, that I know of.

Q. You simply believe, then, as a business principle, that these men who are paying for the privilege of hiring carriages and horses would object to any one going in there and competing with them? A. Without paying? Yes, sir; I do.

THE CHAIRMAN: They will be sustained by the Commissioners in that? A. They would be sustained by the Commissioners.

MR. GOUCHER: How do you know they would? A. Well, I know they would kick up a row pretty quick.

[The clerk read the thirteenth charge.] A. That reduction of rentals relates—that charge relates to the reduction of Coffman & Kenney, on that ranch. Well, that ranch is certainly not worth as much to them as it was to Harris; certainly not worth as much to them, and for this simple reason: Harris was an Israelite. He had a large family. He dealt in everything. His family baked bread and sold to the campers. He sold them milk, and eggs, and vegetables. If a camper came in there and wanted to sell his outfit, he would give them six bits, and if the next camper came in there, he would sell it for \$6 50. He made a living in every way. He would go down to San Francisco in the winter and buy up a lot of old stage horses, and one thing and another that was no account, and turn them out to pasture and fatten them up, and the first camper that had a sick horse, he would want to strike a trade with him. I have known him to have a horse that he offered to sell for \$30 in the fall, and the next spring he would sell it for \$150, and that is why I say the land is not worth as much to Coffman & Kenney as it was to Harris.

MR. CRAWFORD: Wasn't the place burned down also—some buildings?

A. There was a house there that was burned down. There was a house and granary burned down; yes, sir. Mr. Harris had men employed cutting wood wherever he could get wood to cut. For a long time he had the only team in there to do a jobbing business; to haul wood. I know we cut wood for \$2 50 a cord, and he charged \$2 50 a cord for hauling it.

THE CHAIRMAN: Tell the committee, if you please, how this reduction of rentals came about. Did Harris leave the valley, or give up this place voluntarily? A. Well, I don't know. Everybody's opinion is—most of the residents—and it is my opinion, that he left the valley for the valley's good.

Q. That is not material. We want to get at the facts of the case. The rent was reduced. That is an established fact. Why was it reduced? A. Well, now, Coffman & Kenney applied, and I suppose they gave the Commission sufficient reasons, that they reduced it.

Q. Was Harris willing to continue his lease at the same rental that he was paying the Commissioners? A. I don't know. And furthermore, I have always understood that Harris was allowed to keep his place, although other parties at other times had offered more rent than he was paying. I know for a fact, and I think it will be offered in evidence here—I know that witnesses are coming who offered more than Harris was paying at the time.

Q. That is not material at this time. Mr. Harris will be before the committee before the examination is closed.

MR. TULLOCH: How do you know that it will be offered in evidence? A. I know that the parties are summoned as witnesses.

[The clerk read the fourteenth charge.] A. Well, as regards illegal and arbitrary contracts, when I went to work for Mr. Dennison, I went to work there—I knew what I was doing. There were no illegal and no arbitrary contracts, because if a person didn't go to work they were not forced to go to work. I know we worked ten hours, and I went to Mr. Goucher individually and asked him if there was not a law in regard to working ten hours, and he said certainly there was, and he seemed surprised to know that we were working ten hours, and he said he would attend to it immediately, which he did.

THE CHAIRMAN: Do you know of any place where the wages of the workmen were withheld by the Commissioners? A. No; I know that at times they have been slow in paying. I know that they have been slow in paying at times; when they would have no money in the treasury they couldn't pay. I know that I have waited seven months at one time; but, however, it was only for one month that I waited seven months.

MR. TULLOCH: How did you wait seven months? A. It was seven months from the time I earned the money until I got it.

MR. GARDNER: One month's pay? A. There was one month's pay. At that time, most of that time, I was not employed by the Commissioners. But this illegal and arbitrary contracts, I am quite sure, refers to some overtime. When Mr. Goucher introduced this bill, the resolution was also adopted to pay the men for overtime—that is, where they had worked ten hours, to pay them for a day and a quarter, from the first day of January to that year, I think it was; and for some reason the overtime has not been paid; I don't know why.

MR. GOUCHER: Let me ask you a question, please. The Commission did order it paid? A. They certainly did order it paid at the next meeting; at the next June meeting I know that you made a special inquiry to find out if the overtime had been paid, and when informed that it was not, you said you would inquire into it and see that it was paid.

Q. Don't you remember there was an order made at that second meeting last June, again, that it be paid? A. Yes, sir; there was an order made at the second meeting that it should be paid.

[The clerk read the fifteenth charge.] A. I have not the slightest idea what that refers to.

THE CHAIRMAN: You don't know anything about that? A. No, sir; I do not. Their contracts certainly have all been recognized.

[The clerk read the sixteenth charge.] A. I don't know anything about that.

THE CHAIRMAN: You have no knowledge of that? A. None whatever. I don't know anything about that business.

Q. Were you in the valley at the time the Stoneman House was leased? A. Yes, sir; I suppose I was. I don't know when it was leased, nor where it was leased, nor anything about it.

[The clerk read the seventeenth charge.] A. Now, there has been no wood cut in defiance of their own rules and regulations, because their rules and regulations say, I am quite sure, that no timber shall be cut without permission from the Guardian, and there has been no trees cut, I am sure, that he has not come there first, and said: "Cut this tree and cut that tree." They certainly have got to have wood; they certainly have got to have wood to burn, and as I explained further along early in the testimony, there has no trees whatever been cut for wood, and especially for wood, that it was not, in my opinion, a benefit to the valley, and an absolute benefit. They always pick out dead trees. I know Mr. Dennison has told me time and time again: "The Commissioners tell me not to have a tree cut so long as there is one green leaf on it." He has told me that time and time again, and if I would bring him to a tree, if it had just one live branch on it, he wouldn't let me cut it.

MR. TULLOCH: I thought you testified awhile ago that trees that were dead or about decayed you had to cut them down for fear they would come down on you? A. Those trees were about the Stoneman House, if you will please remember, that we cut down, by order of the Commission, to beautify the grounds and to preserve the house.

THE CHAIRMAN: "Thereby destroying the natural park timber." A. I have answered that, I think, fully.

[The clerk read the eighteenth charge.] A. I never knew of toll being collected, except in a piece that I saw in the paper where a gentleman going out on the Mariposa road accused Washburn of collecting toll from him.

THE CHAIRMAN: That is the only instance? A. That is the only instance. And I would say that the toll roads have built the grades from the valley out. The hills are about four miles long in each instance, within the limits of the grant. They are built at great expense up the sides of the bluff, to get on top of the mountain; they are inside the limits of the grant. And the Legislature two years ago, I think it was, passed a bill indemnifying those parties for those roads. One, I think, was vetoed, and the Controller refused to pay the other; and to give these gentlemen who had built the roads something that they might at some time possibly get paid for their trouble, a new lease was given them, but in regard to the terms of the lease, I don't know. This is a mere matter of hearsay.

Q. Do you know that they collected tolls on that road? A. I certainly never heard—I know that they don't on one road; I know that they never have, and I never heard of but one instance, and I don't know that that was done, only what I read in the paper; there was something in the meet-

ing in regard to Washburn returning \$5 to some man who had gone out there with a private team.

Q. What did the Commissioners give him that lease for? A. That lease was to give them something, I think, that they could sell; that they could be indemnified for. The roads were built, and in ten years were to lapse to the State. I don't know anything with regard to it. I have only a very indefinite idea of the whole transaction. It is something entirely outside of my province. You will hear about that, because the road-men, I think, are summoned. It is no use questioning me on it.

Q. You know of no case of toll having been received? A. No, sir; I never heard a complaint.

[The clerk read the nineteenth charge.] A. Well, that must relate to the Leidig family, and they were certainly not evicted. They went out of there of their own accord. They certainly were not evicted; neither forced out or turned out, in any way, manner, or shape.

MR. TULLOCH: Does that apply to the Harris family? A. I don't think that the Harris family were evicted or turned out. I have heard Mr. Harris say—he told me in the valley and he told me here—that he would not go back to the Yosemite Valley for the whole valley; his family, you couldn't get them back; he never was so glad to get out of a place in his life.

THE CHAIRMAN: Why? A. Because he is so much better off than he was. Harris told me that in the valley, and told me that here in Sacramento a week ago.

Q. Then you know of no occasion of turning anybody out of the valley? A. No; nobody was ever turned out of the valley.

Q. What about the district school of Yosemite—after Harris and Leidig left with their families, was the school closed? A. Oh, no; the school has been running—the school run all last summer; they both left in the spring; the school run all last summer. The school certainly was not destroyed.

MR. CRAWFORD: As a matter of fact, the school was not destroyed? A. The school was certainly not destroyed. The school has been going with Kenney's children, and with Barnard's children; but, then, I don't know how many children it takes to get school money, and I don't know but there may not be children enough to run the school to get the next appointment.

Q. How many children are there in attendance? A. Kenney, I think, has six children; there are three or four that attend school, and Barnard has two that attend school.

Q. That makes about six? A. I think there is six. Let us see if there are any other children. There are no children old enough, I believe, but those.

Q. Do you think those six attended school regularly? A. Yes, sir—they attend school regularly, pretty near every day.

Q. Those are all the children there are in the valley? A. There are some younger.

Q. Too young to go to school? A. Yes, sir; too young to go to school.

THE CHAIRMAN: Do you know whether that school is kept publicly or privately? A. It is a public school.

Q. Has been all summer? A. Yes, sir.

MR. GOUCHER: You have omitted to state in regard to McCauley's children, have you not? A. I thought of those afterwards. He has three children. I presume they are old enough to go to school.

Q. Isn't there one of Barnard's that is within the age so as to draw school

money—the youngest child? A. Well, he goes to school. There is the girl and the boy. They both go to school.

MR. CRAWFORD: That would make about ten children of school age in the valley? A. Nine. I don't know whether Kenney has got three children or four children who go to school. He certainly sent three to my positive knowledge, and Barnard two.

THE CHAIRMAN: I understand you to say you know positively that the school is kept up with public money? A. The school was kept up until the term closed; I am positive of that.

Q. When did the term close? A. Well, I don't know whether it was in August—it was in July or August.

Q. And hasn't it been opened since? A. I don't know; it had not been opened when I left there.

MR. GOUCHER: Aren't you mistaken about the time when the school closed there; didn't it continue until October? A. No.

Q. Do you remember who the teacher was? A. Miss Kerrins.

Q. Miss Mamie Kerrins was teacher? A. Yes, sir; I don't know when the school did close, really. I remember in regard to the exhibition, and so forth, but it was my impression it was in August.

THE CHAIRMAN: You couldn't say positively? A. I couldn't say positively. I know it was in session in June. I know that it was in session in July. I am quite certain it was in session on the Fourth of July.

[The clerk read the twentieth charge.] A. The roads and trails never were in better condition than they have been in the past summer—never. The guides are all my personal friends, and all the drivers of carriages; and I have asked them time and time again if the trails or the roads were out of repair in the least to let me know, and they have done it; and they have been kept in perfect repair. I have heard arguments between McCauley and the guides in regard to the trails, and I never heard a guide say that the trail was not in better repair last summer than when McCauley kept it. In regard to the Eagle Point trail—that trail is very little traveled; and the Yosemite Point trail—there is a difference between the Yosemite Point trail and the Eagle Point trail. They both go nearly to the Yosemite Point, and then the Eagle Point branches off. That is on top of the mountain, and there never has been any care bestowed on it since it was built, and it doesn't require any care. The Yosemite Point trail—men go on it whenever there is the slightest thing reported out of the way on the trail, the men are sent right up to repair it.

Q. When were you on this Eagle Point trail? A. I was on this Eagle Point trail in October; I think it was in October.

Q. The whole length of it? A. The whole length of the Yosemite Point trail.

Q. You found it in good condition? A. I found it in first class condition.

MR. ROBINSON: What do you call Eagle Point trail? A. I call the Eagle Point trail from the head of Yosemite Falls to Eagle Point.

Q. What do you call the Yosemite Point trail? A. The Yosemite Point trail is from the foot of the trail to Yosemite Point.

Q. From the foot of what trail does it begin? A. I believe I am a little mistaken; I believe I saw this road, the Eagle Point trail.

Q. Hasn't that trail always been known as the Eagle Peak trail, from the foot to the summit of Eagle Point? A. It was always known as Conway's trail.

Q. But since Conway has ceased to have proprietorship, hasn't it been generally designated as the Eagle Peak trail? A. We never speak of it

as the Eagle Peak trail. I never put it down in my books as the Eagle Peak trail.

Q. The Yosemite Point trail begins at the head of the Falls and goes over to Yosemite Point? A. No; I didn't say that; I say the Eagle Peak trail begins at the top of the Falls—

Q. That is not the question I asked you? A. You said I said, and I said, no, I didn't say.

Q. That is not what I am asking you at all. The Yosemite Point trail proper begins at the head of the Falls and goes over to Yosemite Point? A. That is what you say.

Q. Isn't that what they designate the Yosemite Point trail—the new trail? A. No. I always call the trail, and always have on my time book and the record that we keep of the men's work, where they are at work—that they are employed on the Yosemite Point trail.

Q. That is supposed to begin at the valley level, and go to the top? A. You can begin anywhere you want to.

Q. Isn't it a positive fact that nobody has gone to that trail this year? A. I have told you that is not called the Eagle Peak trail.

Q. And you say that trail is in perfect repair—the Eagle Peak trail? A. The name has nothing to do with the condition of the trail.

Q. You say the Eagle Peak trail is in good repair? A. I say the trail from the valley to Yosemite Point is in good repair.

Q. You call those logs at every turn good repair; a step that drops from ten to twelve inches? A. Those logs were left in—they are not logs, begging your pardon. They are in there for the preservation of the trail.

Q. Who put them in there? A. Well, I think—I don't know who put them there.

Q. By whose order were they put there? A. I think by Mr. Dennison's.

Q. Were they put there before Mr. Dennison ordered them? A. I don't think so.

Q. Are they in any other trails? A. Yes, sir; in every single one of the other trails.

Q. It makes a series of steps as low as ten or twelve inches, sort of zig-zag? A. Nothing of the kind. I have seen the Snow trail and the Glacier Point trail utterly obliterated by summer rains, because there was not those large rails to turn the waters off at the corners, at the zigzags.

Q. Didn't you use to ditch them? A. That is what those poles are there for. In constantly traveling up the trails, no matter how large a ditch you dig, the first herd of horses that goes down levels that ditch unless there is a pole to hold the dirt, and they are put in zigzag so that the water will go off clear, and not wash down the whole length; and allow me to go on and further say that those poles are an absolute necessity, because in a great many places, not in one place or two places, but in a great many places on those trails the dirt of which the trails are composed has got to be packed in on our backs in barley sacks a great distance, and a heavy shower will sometimes cause a week's work there for four or five men packing in dirt, where a pole would turn it off, and one man could go alone and scratch the dirt in, and that would be all that is necessary, and those poles are not an obstruction.

Q. Isn't it a fact, that as you travel over those trails, going down, that a horse has got to step from six inches to ten inches and a foot, and bear his whole weight on his fore feet to get down those places, and are they not growing deeper all the time? Isn't it like stepping down out of a chair? Isn't it dangerous for people riding those horses? A. No; I don't think that there is any danger on the trails, because there has never been an

accident, to my knowledge, on any of those trails. Allow me to say, Mr. Rundell, that the men go constantly over these trails, and keep throwing in dirt, and working the dirt back to what Mr. Robinson calls these steps.

THE CHAIRMAN: You consider them all in good condition? A. All in excellent condition, sir.

[The clerk read the twenty-first charge.] A. Well, I never had any intimation: never heard anything of the kind but once in the valley, never; and that was last Fourth of July, about seven o'clock. Just at the break of day, John K. Barnard came to my room and woke me up, and wanted me to go with his man and cut some little cedars, to decorate the house. I told him I didn't want to go. There were thousands of cedars. He says, "You better get up; you know where they are; you will probably pick them out better, and there can be no talk about it." And he urged me, and finally I said I would go; and went with him, and helped him haul in a load or two in a cart, of young cedars and pines, to put up in front of his house. We cut them in the densest thickets, where you could cut out a hundred and wouldn't know it; and they were put in front of the house. Cook did the same at his hotel. I helped Barnard to get them up, because it was along toward seven o'clock; he wanted to get it done: and I helped him put his flags up. Next day I went to work. Cook had his house decorated in the same way. He looked at it, and said, "You have done that pretty well." I said, "Yes, but the State helped to decorate Barnard's." I did it simply and solely as an accommodation for Barnard, and was not paid for it. That was on the Fourth of July.

Q. You got no pay for it? A. Barnard paid me for it—paid me individually. I didn't want to take anything, but he forced it on to me. I told him I didn't want it, it was merely an accommodation, and he said, "Why, take it." That is the only thing I ever heard in regard to work for private parties. But he refers particularly to work done about the Stoneman House; the cutting down of these trees. What is it, Mr. Robinson?

MR. ROBINSON: Putting in the dirt and all that stuff around the Stoneman House; putting gravel around the Stoneman House this summer. A. The State teams hauled in the gravel.

THE CHAIRMAN: For the Stoneman House? A. In front of the house. I know they improved the ground, you may say, to a certain extent. They built an ice house; they built a chicken house: they built a wood-house for him. They fitted up a building for a store, where his store and saloon is, and billiard room. Allow me to say this, that where the Stoneman House was built, when the ground is dry, it is like ashes, you will go to your ankles every step; and the State teams hauled in gravel. I don't see why that should be work for private parties any more than hauling it off the road. It is where the stages come in front of the door. The stage drives in there in front of the door, and the State teams hauled in gravel on top of this loose sandy soil.

Q. Do you know whether Cook's lease of the hotel called for those improvements? A. I am quite sure that it does not, because Cook told me that he would not accept the lease of the house unless they made his improvements for him; and one of the Commissioners, I think it was the Governor, spoke up and said: "What constitutes a hotel? Is it the bare house, or is it the necessary buildings to surround it?" and I think that they consented to make improvements.

MR. TULLOCH: Who asked that question?

MR. GOUCHER: The Governor, he said.

MR. TULLOCH: Did he ask it of you? A. No. I mentioned that Cook

told me this. This was simply a conversation between myself and Mr. Cook.

[The clerk read the twenty-second charge.] A. I think that is an assertion more than a question. I don't know. I have seen no incompetency or anything of the kind, I declare.

THE CHAIRMAN: You know nothing about the charge? A. No, sir; nothing whatever.

Q. You know of nothing that the Commissioners have done to destroy the comfort or convenience of visitors in the valley—visitors from abroad? A. I do not; I certainly do not.

Q. Or for the welfare of the residents of the valley? A. I know nothing.

Q. You know of nothing of that kind being done? A. I know of nothing whatever, I am sure.

[Adjourned to the call of the Chair.]

FRIDAY EVENING, February 8, 1889.

GEORGE BARNES.

Being duly sworn by the Chairman, testified as follows:

THE CHAIRMAN: Where do you reside, Mr. Barnes? Answer—In Jacksonville, Tuolumne County.

Q. What business are you engaged in? A. Mining.

MR. TULLY: We propose to question Mr. Barnes in regard to charge twelve, with regard to work done in the valley and withholding wages.

Q. Have you ever worked in the Yosemite Valley? A. Yes, sir.

Q. What time, and what years? A. I have worked there for this last four years.

Q. How long since? A. Oh, I have worked in the valley before. I have been working in the valley off and on ever since 1874, when the roads started.

Q. Who employed you to work there? A. Mr. Hutchings, first, in the valley.

Q. And afterwards for whom did you work? A. Mr. Dennison.

Q. Who is Mr. Dennison; he is one of the Guardians, I believe? A. Yes, sir.

Q. Were you working for the Commission? A. Yes, sir.

Q. In what were you engaged; what particular branch of labor? A. Well, I was engaged in work.

Q. What kind of work; cutting wood, plowing, or what? A. Cutting wood and putting up wire fences and trails, roads, blasting.

Q. You worked generally in anything of that sort? A. Yes, sir.

Q. Whatever was required of you? A. Yes, sir.

Q. Were you regularly paid for your services? A. No, sir; they kept back time; they kept back time all the time; I was paid except this overtime that they promised us.

Q. That overtime, I understand, is time that you worked over and above eight hours a day, which was your regular day's work? A. Yes, sir.

Q. And the overtime is the time you worked outside or beyond eight hours a day? A. Yes, sir.

Q. Well, to what particular time does that back pay refer; under whom were you working? A. Mr. Dennison.

Q. That was under Dennison's administration? A. Yes, sir.

Q. Whilst he was Guardian? A. Yes, sir; I have the time here, I believe, that Dennison gave me. [Produces paper.]

Q. What portion of this did they pay you? You say they paid you for the eight hours every day; for every day of eight hours. They paid you that, did they? A. They didn't pay me; when I left I sold my time to Louis, and I asked him if he would take the overtime; he said, "No." I says, "I will keep it, anyway." I sold my time; there was \$155 coming to me, and I sold it to him for \$150.

Q. How long had that been due and unpaid? A. About two months and three weeks, I guess.

Q. Had you demanded your wages in the meantime? A. Yes, sir.

Q. Your pay? A. Yes, sir.

Q. Of whom did you demand it? A. Of McCord; I asked him if the pay was coming up

Q. Who was Mr. McCord? A. He was the Guardian of the valley.

Q. At that time? A. Yes, sir.

Q. Was he the one who usually paid the wages of the laborers there? A. Yes, sir.

Q. And you demanded your wages of him for your full time? A. Yes, sir.

Q. What excuse did he give you for not paying it? A. Well, he said he didn't think that we would get our overtime; he told me that.

Q. What excuse did he give for not paying you your just time? A. He told me the money hadn't come, "and just as soon as it does come you shall have it, George," says he, "and if you want money to pay your board, I will let you have it." Says I, "Mr. McCord, I work for money, and I don't care about borrowing any money." I had to quit then to go home.

Q. You sold your claim? A. I sold it to one of the Italians, named Louis; I can't think of his other name.

Q. What was the amount due you? A. \$189 06, overtime and all.

Q. That was the overtime and all? A. Yes, sir.

Q. What amount was due you on the time, exclusive of the overtime. A. There was \$155.

Q. That would leave some thirty odd dollars for overwork? A. \$34 06.

Q. Well, I understand you to say that he said he didn't pay it, because he didn't have the money; the money had not arrived. Is that true? A. Yes, sir.

Q. Well, did the money arrive before you sold out? A. No, sir.

Q. Do you know whether it had arrived or not? A. No, sir; I do not.

Q. Do you know that it had arrived, or that it had not arrived? A. I know it had not arrived when I came out of the valley.

Q. How long after your demand was it before you sold out, and left the valley? A. I sold to him, about three days before I left the valley, my time.

Q. How long was that after you demanded your pay? A. Well, it might have been a week; it was just about a week, because I waited a week to see if it might come, but then it didn't come, and I sold to Louis and went out. I had to go out to work a quartz mine.

Q. Do you know whether it was a usual thing for them to be behind-hand in the payment? A. Yes, sir; they used to keep the money back from the boys for three months to four.

Q. Do you know of any other instance in which the money was kept

back three or four months? A. No, I don't; I know that they owed the boys on work; that they owed them three or four months at a time.

Q. How do you know that; by conversing with the parties to whom the money was owing? A. Yes, sir.

Q. They told you they had not been able to get their money? A. Yes, sir.

Q. How much did you say you sold your claim for? A. I sold my claim for \$150.

Q. For \$150? A. Yes, sir; it was \$155, and I gave him \$5 when I sold it.

Q. You discounted it \$5? A. Yes, sir.

Q. That was for the regular eight-hour pay? A. Yes, sir.

Q. That didn't include the overtime? A. No.

Q. You gave him a certain bonus? A. \$5; yes, sir.

Q. Your account was \$180 and something? A. Mine was \$189 06.

Q. Then you lost something on that transaction, didn't you? Supposing that you were entitled to that overwork, then you consider you lost something on that transaction? In other words, you got \$150, did you not? A. Yes, sir. Well, I got this from Louis; I gave him \$5 for taking it.

Q. \$150? Then I understand you to say that your claim against them for the regular eight-hour work and the overwork was one hundred and eighty odd dollars? A. Yes, sir.

Q. And then did you or did you not lose any money on that transaction; any money that you considered was legally due to you, overtime and all? A. Well, that is all; that was all.

MR. GARDNER: You lost \$5? A. Yes, sir, I lost \$5; I gave him \$5.

Q. That was all you lost? A. Yes, sir.

MR. CRAWFORD: Did you sell the whole claim, for the overtime and the regular pay, for \$150, or was it simply the regular pay? A. Simply the regular pay.

MR. TULLY: Well, have you ever got anything for that overwork? A. No, sir.

Q. Did you ever make any demand for it? A. Yes, sir.

Q. After you sold out; after you left there? A. I never made no demand before I came here to Mr. Goucher.

Q. Did you or did you not get it? A. No, sir.

Q. Did they pay it? A. No; I have not got it.

Q. What reason did they assign for not paying it, if any? A. Well, they were to see some one else first.

Q. Had to see somebody else? A. Before they could pay it; yes, sir.

Q. Then I understand from this statement of facts that you consider they still owe you for that overwork? A. Yes, sir.

Q. That is, some thirty odd dollars? A. \$34 06.

Q. You say that you have made a recent demand for it, lately? A. Yes, sir.

Q. And the answer was they would have to see somebody else? A. Well, they would see some one else to get it.

Q. They would see some one else to get it? A. Yes, sir.

Q. They didn't deny that they owed it? A. No.

MR. CRAWFORD: How long has it been since you finished that work and made your demand for the pay? A. Well, it is since, as near as I can recollect, about the twenty-seventh of last July.

MR. HOOK: How often were the Commissioners in the habit of paying money to workmen? A. Well, once every two or three months; and, then, it might come two or three months—

Q. Didn't they have a regular time to pay you? A. They let us get a few months behindhand.

Q. Did they pay you four times a year, or three times a year, if you worked steadily? You worked eight hours a day; I understand that? A. Well, I think they paid about three times.

Q. Three or four times a year? A. Yes, sir.

Q. Then the demand that you made on them was the time they had not money on hand so as to pay you? A. Yes, sir.

Q. You had no doubt but that they would pay you? A. No.

Q. You have no doubt now but that they would pay you \$34 06? A. No, sir; not a bit.

Q. You don't think the Commissioners intended to defraud you, anyway, do you? A. No, sir; I don't.

Q. It is simply the delay on account of being State business? A. Yes, sir.

Q. They treated you pretty well? A. They treated me as well as any man ever treated me.

Q. You had no difficulty in any way or shape with them? A. No.

MR. TULLY: Mr. Barnes, did you ever write to Controller Dunn about this business? A. Yes, sir.

Q. Did you ever get any reply from him? A. Yes. Mr. Robinson has got the letter.

Q. What was your object in writing to him? A. Well, it was just because I thought I might get the money quicker, and I would stop that week, and then go down and work a quartz claim. That was the reason. I thought I might get it quicker by doing that. I thought he might push it on.

Q. Now, Mr. Barnes, you say you worked down there in all kinds of work? A. Yes, sir.

Q. Did you build any fences down there, or help build them? A. Yes, sir.

Q. What was the character of those fences; what kind of fences? A. Well, wire, and hemlock and little pines, and cedar posts.

Q. In what part of the valley are those fences? A. Well, there is one fence away down by Black's Springs; that is in the lower end of the valley, and then there is another from, you might say from Leidig's away up—well, to Harris' place, I suppose. I know we run that.

Q. You are a pretty good judge, Mr. Barnes, of the size of a field, by acres, a little more or less? A. Yes, sir; I am, guessing by acres.

Q. How much land is there fenced in, under fences, wire, and brush and tamarack, or whatever it is, in that valley? A. Well, I guess down to the lower end, by Stegeman's garden, down at Black's Springs—I should think there was about near seven hundred acres in all.

Q. Fenced? A. Yes, sir.

Q. Seven hundred acres of land fenced within the valley? A. I think so; within the valley.

Q. Well, in what portions of the valley? Is the bigger part of that valley fenced, or all of it? A. Well, it is right in the center of the valley; right in the best part of the valley.

Q. Most of it? A. Yes, sir.

Q. How does that lie with regard to the hotel; the bigger portion of that. How does it lie with regard to the hotel and the main road that is there? A. Well, it lies pretty crooked, I would say.

Q. Does it lie above or below—does it lie up towards Mirror Lake or is it down below the hotels? A. Well, I should think Barnard's hotel was

in about the middle of it. It starts from Leidig's to the Central Dome, and runs plump up to Harris', and Barnard's is just about the middle of the fence.

Q. To what uses is that land put; what do they use it for? A. Well, they farm on Harris' place. There is great deal of grain raised.

Q. They farm it? A. Yes, sir; the other end is meadows for horses.

Q. And pasturage? A. Yes, sir; and pasturage.

Q. About what is the portion of meadow land or pasture land; one half, one third, or one fourth? A. Well, I should think if you take it at the new hotel, there—

Q. Everything; all the land; all these inclosed lands. What is the proportion of grazing land to the land that is under cultivation? A. Well, I think there was maybe two hundred acres.

Q. Two hundred acres is under cultivation? A. Yes, sir.

Q. To what is that seeded? A. Grain, principally.

Q. Do you know who sows that grain on the land? A. I think it was Coffman & Kenney.

Q. Who are Coffman & Kenney? A. Well, they are the men who have the mules in the valley.

Q. The owners of the saddle train? A. The owners of the saddle train.

Q. Do you know whether they farm that as having rented it, or whether it is a gratuitous gift to them, the privilege of doing that? A. I don't know, sir.

Q. Now, Mr. Barnes, you have been pretty well over that valley, haven't you, at different times? A. Yes, sir; I have.

Q. Now, I will ask you one question in regard to those fences. Simply in the light of a fence or a barrier, or an obstruction to the free ingress and egress, or the going in or going out of that valley, in order to look at it as a tourist or visitor would want to look at it. How do those fences operate? Do they prevent them from doing it or not? A. Well, I don't think the fence looks very well, myself.

Q. I am not talking about how they look, but is it an obstacle, a barrier to the free egress and ingress to the beauties of that valley; to a person wanting to go out and look at it all over and take it in in its entirety. For instance, if you were a stranger, and went into that valley and wanted to take a general look at it all over—enjoy all its scenery and everything—do you consider that those fences would operate as an obstacle or a barrier to the free access to any portion of it there that you would desire to see? A. It would not; not at the mountains.

Q. You can see the mountains from the ground? A. Yes, sir.

Q. But suppose you wanted to go in the little nooks, and holes, and corners, and examine it in that regard, as perhaps many persons would: would you have to climb over those fences, or how would you get in? A. Yes, sir; it is fenced along the roads; it is fenced plumb to the road on each side.

Q. You will understand the nature of the questions. Do you consider that those fences are in the way to a visitor that wanted to go and have free access to all the scenery of that valley? I don't mean to look up at the mountains, but to look at any portion of it—to go into these little cañons? A. Yes, sir, it is in the way, because you would have to go over the fences.

Q. You would have to go over the fences? A. Yes, sir.

Q. Are those fences supplied with gates pretty generally around there, so as to give a man a chance of going through the gate instead of climb-

ing the fence? A. There is two places: one going down towards Leidig's, and another over to Yosemite Bridge.

Q. Outside of those gates a man would have to climb a fence, or go under it, or through it? A. Yes, sir, as far as I can see.

MR. HOOK: He can go in those fields any time he wants to, can he? A. There is one of these swinging gates.

Q. He can climb the fence, or go inside there, any time he pleases to view the scenery? A. Yes, sir, he can climb through the fences.

MR. GARDNER: Are there any turnstiles or any way for foot-passengers to get across the fences? A. There is a turnstile to go to the Yosemite and to go down towards Leidig's, and then the rest is all inclosed. Those are the only two I can remember.

MR. CRAWFORD: Do they permit people to go through those fields whenever they please? Do the authorities allow people to go through those fields? A. I don't think they will hinder them. I see them go through once in awhile.

MR. TULLY: How many horses, more or less, have Kenney & Co. there? A. I couldn't tell you that.

Q. Well, fifty, or sixty, or seventy-five, or twenty? A. Well, I should think they had fifty.

Q. Are those horses accustomed to roam at large through those pasture fields and over that inclosed land? A. No, sir; they have got places for those by the Yosemite Falls there and up at their place.

Q. They have special pasturage set apart for their own use? A. Yes, sir.

Q. In which they turn their horses? A. Yes, sir.

Q. Do you know whether or not there is a part of that meadow land set apart for campers? A. Yes, sir; there is a piece up by Mr. Kenney's; he has got it now.

Q. That is towards the upper end of the valley, is it not? A. Yes, sir.

Q. What amount of land is reserved there for the accommodation of campers and visitors? A. I couldn't tell you.

Q. Well, a little more or less; make an approximate? A. Well, there may be thirty acres.

Q. You think that there is no more than thirty acres? A. I can't tell how long the lot is; I am working away from there for the last two years. I have been through it once or twice, but didn't examine it very close.

THE CHAIRMAN: That is all, Mr. Barnes.

FRED. BRIGHTMAN.

Being sworn by the Chairman, testified as follows:

MR. TULLY: Mr. Brightman, where do you reside, sir? Answer—In Mariposa.

Q. Are you acquainted with the Yosemite Valley country up there? A. Yes, sir; pretty well.

Q. You have been there, have you? A. I have been there for the last twenty years, working in that vicinity.

Q. What was your occupation whilst you were there? A. I went there first and worked for Hutchings. I went in there to buy his pack train.

Q. To buy the pack train? A. To buy his pack train, and I couldn't buy it. I went in there to buy the train so as to pack in Johnny Smith with a saloon—his fixings; and I couldn't buy it, and went to work for Hutchings.

Q. In what way were you employed? A. Well, guiding parties.

Q. How long were you in that business? A. Well, I worked for him two seasons.

Q. Well, after you got through with that, were you engaged in any other business there? A. Then I started in the saddle train business myself.

Q. Well, did you have a saddle train there? A. Yes, sir. The first year I had six head of horses and couldn't give satisfaction, and the next year I took in twelve, and the next year I took in thirty-two, and the next year I had ninety-six. I had Hutchings' saddle train with my own.

Q. From whom did you obtain permission to go in there and operate your saddle train, if you had it from anybody? A. Not any one. I went in there the same as all the rest did at that time.

Mr. Hook: That was before the Commission was formed? A. Well, no; the Commission was formed then. Mr. Raymond was in during the old Board of Commissioners' term. I went in there with the expectation to take the camping parties. That was my intention in the first place, to go in there and furnish saddle horses to camping parties at \$2 50 a day. I thought I could make it pay, and it would be reasonable on them. That was my intention, and I followed it up until the year that I took Mr. Hutchings'. I didn't interfere with any one, because the parties was all ticketed in by Washburn. The custom was then to sell tickets in San Francisco, and furnish horses as many days as they wanted them in the valley.

Q. They came with a ticket that gave them the right to use the horses? A. Yes, sir. If there were any parties went up to the valley, and didn't buy saddle horse tickets—they got into trouble, and after awhile they wouldn't buy them, tourists wouldn't, because they found they could hire horses cheaper in the valley than what they were selling tickets for; and for that reason any parties I could find that hadn't got the round-trip tickets, I would offer them horses at \$2 50 a day.

Mr. TULLY: Who furnished the horses to those ticketed parties? A. Mr. Washburn; they were running the stages.

Q. That was then a part of the stage line business? A. That was the stage line.

Q. Well, how long did you remain there in that business? A. Well, I remained there—I have been in the business all the time; but the season that we had the ninety-three head of horses we run horses for nothing—that is, you may say for nothing; we didn't run them for nothing, because we got two bits, and I paid parties \$1 apiece to ride my horses into the valley—this is, if they went to Black's hotel. If I engaged a party to go to the valley from Jentry's—that was the Oak Flat road; I run on that road altogether; I didn't run on Washburn's road at all; and if I went out to Jentry's and got a party to go to Black's, I would pay them \$1, and Black paid me the \$1 back, and they agreed to take my horses. If they rode any in the valley, they rode my horses at \$2 50 a day; that was that arrangement.

Q. Then I understand there was some competition between the saddle trains there? A. Yes, sir; there was a good deal.

Q. You were competing with whom? A. I was competing with Hutchings and Washburn and Stegeman.

Q. They also had trains? A. They had trains too, the same as me.

Q. Are you in that business yet? A. No, sir.

Q. When did you retire from it, and what was the reason, if it is a fair question? A. I think it was in 1877, that I applied; Mr. Lemmon died. I had always had that branch, with this condition: that I was to cut his hay in one field that was fenced in—the old Lemmon field. I cut the hay

on shares. I had one half of the hay, with the privilege to run my horses above Mr. Hutchings' old claim. You understand there were two claims, the Hutchings claim and Lemmon's. I run mine on Lemmon's claim, with the understanding, when I went there, to have both sides of the river, where the Stoneman House is now, and where Hutchings' or Lemmon's house was burned down. But the second year we got to having considerable hot times, and the horses went up to old man Lemmon's orchard (and it was not fenced in, you understand), and the horses got to bothering him and his trees, eating the apples off and knocking them off, and he commenced shooting them. And Mr. Hutchings had horses (he had run his horses up there and bothered him), and they got to shooting them. And then we called a meeting, and I proposed to Washburn and to the rest that had saddle trains, that we hire a man, and pay the man betwixt us, to herd the horses away from the orchard.

Q. Mr. Lemmon's orchard? A. Yes, sir.

MR. GARDNER: What were your receipts for that year that you had the ninety-three horses? A. Our receipts for that year were \$2,500, and Washburn paid me \$500 for twenty-five head of horses to run to the Big Trees, which I took right out of the valley, and when we came to settle up in the fall the books showed that we only received \$2,500.

MR. TULLEY: Now, did you lose any share in the saddle train? A. Well, I came pretty near losing it.

Q. Well, will you please state to the committee here what was the nature of that transaction and how it happened? A. I applied, with George Kenney—he was my partner then—we applied to the Board for a lease; Mr. Lemmon had died, and we applied for a lease of the ranch.

Q. What ranch was that? A. That was the Lemmon ranch; the two meadows there and the house that was burned up. They granted us the lease for ten years—a ten years' lease. After we had got the lease we found that we were short of money. I told George then: "The best thing we can do is to let Mr. Sprague in with us," and he proposed Mr. Harris. Says I: "All right," but still I didn't like Harris, but still we let him in, with a written agreement that he was to pay the lease money, and the seed would cost about \$300. That was the money that he was to furnish.

Q. What was the lease money? How much was it? A. \$500. Well, we got the lease and transferred it to him, to Harris, with the understanding that he was to furnish that money; and the next fall, if we paid him, we were to take the ranch back. Well, I went to work then—started right in to plowing. I borrowed a plow of Leidig, and we owned a good four-horse plow that Sprague had. I expected him in in a couple of days, and I had put four horses on two plows—one single plow, and one four-horse plow. I started in to work, and I hadn't been to work more than an hour and a half before Harris came up, and said that George Kenney was complaining about my running the thing at too big an expense; and I told him the circumstances, and we got into words, and I told him I would burst up the transaction that we had entered into. Well, I still kept my bed in the house. I thought to myself that as long as my bed was in the house, that was my home, as I leased the place to get my mother there to make her home. I thought as long as my blankets were there that I would see the thing settled up, anyway, before I got out of it. I went down one morning—I had been up to Mirror Lake—I went down, and found my blankets thrown out under a tree. Well, of course, I thought my foothold was gone; that let me out with the saddle train. I had my blankets, and the next spring I went in there, and I had to go to work hiring out. I went to work for Mr. Washburn, by the month, and I worked

on that summer. That fall I applied—I sent in my application for a lease of that barn—Washburn's barn, it is called; the upper barn. I asked Washburn if he was going to use it, and he said no; said he didn't want it. "Well," says I, "I would like first rate to have that barn." And says he, "Why don't you put in application for a lease?" "Well," says I, "I think I will. I will put in a lease, just to keep hay and barley, and to take transient custom that comes in from Stockton—private teams—any teams that come in." I applied for the house, and I didn't get it. I never heard from it at all. So, of course, I kept on to work for Washburn, and the next year I was working for Washburn, and through him I applied for a lease then to run a carriage, and it was through him, too, that I asked for the lease, because he was to help me along in case I got it. We calculated to put in as good carriages as there is in Stockton, and to satisfy the public right; do what was right. Well, I didn't get it. I have still worked on for Washburn, ever since. I have been in his employ all the time; but here three years ago—well, I wanted to state this thing just as it is, and show to you where this ring—if there is any ring, as you call it, I want to show it.

Q. What year are you now speaking of, and what year did this other transaction take place? A. That was in about 1870. I never have kept any dates, because I was working by the month and had no reason to. But you will see that Kenney's, and Harris,' and Stegeman's, and Hutchings' saddle train was running against Washburn at this time.

Q. That was about 1870? A. Yes, sir; and they didn't give good satisfaction to tourists coming into the valley. People were complaining all the while; and Washburn, of course, was giving very good satisfaction, but he didn't care about the saddle train business, and they proposed to give him 10 per cent on what money was received in the saddle train business.

Q. That is, these other parties you have mentioned? A. Yes, sir; and it was a combination, you will say.

MR. GARDNER: How do you know they agreed? A. I knew, because I was there. It was common talk amongst everybody, and they told, themselves. That is all the way I know. I had nothing to do with the business, any more than I was watching them the same as everybody else. It was common talk; I don't know any further than that. So it run on a couple of years that the company gave their 10 per cent, and everything went smoothly, until Kenney & Coffman refused to give the 10 per cent. Well, that let Washburn out of the saddle train business altogether. He had disposed of all his saddles and had no horses. Of course, he could start a saddle train up any time. We have oftentimes run horses in that belonged to the stable, to accommodate the public, when we knew they didn't have the horses, or when parties wanted to go by Glacier Point.

MR. TULLY: When you say "we," you mean Washburn? A. Washburn himself. I say "we," because I was working for Washburn, and I generally went; but I had no interest in the saddle train business at that time. Well, Washburn, several times—once or twice—made applications for leases for carriages, and to run a saddle train, and it was not granted to him. Of course, he was out of the saddle train business, the same as I was, only he had plenty of stage stock and I didn't.

Q. Are you through? A. Yes, sir; I am through.

Q. Now the difficulties that you had in there that you speak about, and about bursting up; with whom was that difficulty? Was it with the Commissioners, or with your associates in business? A. Oh, the difficulties were with tourists applying for horses, that they made these complaints.

Q. But you said awhile ago that you bursted up, and your blankets

were put out, and one thing and another. Was it between yourself and your associates? A. That was between me and Kenney. I wanted to state to you, in regard to the valley—that is the meadows where our feed was at the time that I was in the saddle train business—of course I would like to show to you how the thing is run, just as it is to-day.

Q. That is what we want to know. A. That is just what I want to tell you. I have got no interest one way or the other, for Washburn. Of course he is a friend of mine, but no more than to pay me daily wages; and I have watched the thing through and kept my mouth shut. Now, you are acquainted with the valley, are you not?

MR. TULLY: Yes, sir. A. Well, when I went in there, there was no fences at all. When Lemmon got that field fenced up—the old Lemmon field—that was fenced, and I cut the hay inside of it, and when he died I applied for this lease, and I had paid for grubbing out that old field, and cutting the ditches to lead the water down to the river that was soaked from the mountains. I had paid \$300 on that first field. Then I paid the Indians \$150 for grubbing out in that new field that Harris fenced in. That is what I paid for grubbing it out, but he fenced it. He fenced that field in, and he has built one or two houses there, and he puts in—I see by the papers when I came up here, that he makes a claim there against the State of between \$4,000 and \$5,000 that he has spent on that ranch; but I don't see where it is, any more than that fence, and two or three little houses, made from common shakes and such things. Well, now, to-day there is—Mr. Mills testified there was forty-eight acres. It had slipped my mind, but I remember now, old man Clarke surveyed the whole lot. There was forty-eight acres in that; and when we got the lease there was ninety acres in that claim. Well, now, I took a piece of paper, and sat down with four men, since I have been here in this camp, and give our best judgment, judging from that forty-eight acre field, or of the Harris ranch of ninety acres, either one. There is ninety acres fenced in there, that Coffmann & Kenney have got. The next is Barnard's, which, if they get short of feed, they have that. Then there is a space between the road and Yosemite Creek, to the left, as you cross the meadow, that Barnard generally keeps for his own cows and horses. Well, then, we will cross Yosemite Creek. George Kenney has got from there clear to the old Folsom bridge. That is all under a fence.

Q. About how much is there in that inclosure? A. I didn't give you an account of the upper field. Of course, that is Barnard's, but then they have it in case they need it. I should judge, to the best of my knowledge, judging from the ninety acres at Harris', that there are at least one hundred and twenty-five acres, including Leidig's field that was taken away from him. You understand the saddle train men broke those fences down, and the Commissioners bothered Mrs. Leidig. She tried to hold it but she couldn't. The saddle train men would burst the fences open, and Mrs. Leidig kept a man there trying to keep the horses out, but he couldn't do it. She made a complaint to the Commissioners—she didn't know what to do, whether to lease it—some one of them said if she leased it it would throw her out of the claim. At last she let it for \$50, and then the Guardian—I think it was Dennison; I am very sure it was Dennison—told her, or told Coffman & Kenney, not to pay her the \$50, but to pay it to him, and so it was done so. She told me so; that she paid it to him. Well, they had the whole of it then; they got it all. They got her field, and clear to Yosemite Creek, which I think is one hundred and twenty-five acres, to the best of my judgment. Well, the next, you know, is the butcher shop and the field belonging to it, and next comes the El Capitan

meadow. Well, I have put in the grain there; I sowed in two tons of grain there myself, and I should judge at least—I don't want to call it any more than what it is—but I would judge there are seventy-five acres, because they have broken up and plowed more since I did the work; but I should call it seventy-five acres in that field.

Q. That is controlled by Kenney & Co.? A. That is inclosed. They have it for a field. Well, now, we will cross the river at the Bridal Veil Fall. Now, Kenney & Coffman have that field, which takes all the ground that is open.

Q. That is on the south side of the Merced? A. On the south side of the valley next to the Bridal Veil. That field—gracious, I don't know. It is two pieces, the meadow is, and they are large. It takes all the meadow ground. It is all fenced in. That takes in all below the Cathedral Spires.

Q. All the valley? A. Yes, sir; all the valley that a horse would graze on, if you should turn him out. That they have; and I should judge, to the best of my knowledge, there were one hundred acres of open ground there, with no trees on. We will call that one hundred acres. Then they have the Leidig field that he had, right above Folsom bridge there—the first one he fenced in. That one they have. So you might say they have got the whole valley; that is, Coffman & Kenney and Washburn; because Washburn is in the ring now. Of course, he bought into the ring. You can't blame Washburn for buying in. Of course, he is into the ring.

MR. GARDNER: How do you know there is a ring? How do you know all these things? A. I don't know, any more than what we call a ring. They say that is a ring. I don't know it.

Q. You don't know whether there is a ring or not, of your own knowledge? A. No. It looks like a ring to me. I don't say it is a ring.

MR. TULLY: Now, I will ask you, are all these fields that you speak of, are they all inclosed? A. Yes, sir; all under fence.

Q. To-day? A. To-day.

Q. How long have they been so? A. Well, I'll tell you. Before 1880 there was not much trouble; but since 1880 Mr. Briggs and Mr. Mills, and Dr. May—of course there has been a great deal of this going on since. All this trouble has been going on since, and they are brought into it by degrees by complaints. Of course everybody is complaining to them, and I suppose they try to do the best they can to keep from having any trouble, but they have overreached the thing, in my mind. I don't say that they have, but I think that they have given Kenney & Coffman too much rights.

Q. You say "they." You mean the Commissioners? A. The Commissioners; because they have given them all the fields there is.

Q. As far as you know, did those men to whom this is rented rent that from the Commissioners? A. Yes, sir.

Q. Well, that is all fenced? A. That is all fenced.

Q. Do they exclude any other persons except tourists and visitors from those premises? A. Of course. There has nobody any right to go in there. They are rented for their horses.

Q. They have the exclusive privilege of using all those inclosures to which you allude? A. Yes, sir.

Q. They have leased those privileges from the Commissioners? A. They have leased them, the same as I would lease a piece of ground from you.

Q. Do you know what they pay for those privileges? A. I understand Coffman & Kenney pay \$500 for the lease, but since I have been down here I have been told they have reduced the lease, on account of the burning of that building, to \$250. All I understand Coffman & Kenney pay

to-day for the running of the saddle trains and carriages, and for those fields, is \$250. That is what I consider an exclusive right.

Q. In the upper part of the valley, away up there towards Snow's? A. Well, that was my old place to run horses.

Q. Is that all fenced up? A. That is another field that I will tell you of now. The field that the Stoneman House—of course they have put that field into grain. That was twenty-five acres. I wanted to get that to plow it up when Lemmon had it, but I couldn't get it; but that is all an open field there opposite the Stoneman House, if you remember.

Q. I have not been there since the Stoneman House was built. In order that I may better understand that, will you please state to me where the Stoneman House is located, as regards the old Barnard hotel, and the one that was right in front of it, that the tree run up in the middle of it, or, in other words, that was built around the tree? A. The old Hutchings house?

Q. Yes. Is it across the river? A. No. It is right up on the same side. You keep right up, on the same side of the river, until you get where you can see Glacier Rock.

Q. Is it before you get to the old Harris place? A. Right opposite the old Harris place, in the open meadow.

Q. You know there is a place where a hurricane struck it, and snatched up a good many of those big trees? A. It is a little above that—about a quarter of a mile.

Q. I want to locate that hotel, because there is a good deal of talk about it, and that has been located since I was there. The old Barnard hotel was down on the Merced, opposite the bridge—opposite the Hutchings place. When I was there Barnard had a hotel, right in front of the house built around a tree. A. That is the old Hutchings place.

Q. Barnard was using that as a hotel? A. Yes, sir.

Q. Is that the Barnard hotel yet? A. That is the Barnard hotel. I see the Board don't understand a great many things which I could sit here and listen to. I like to see every man testify to the best of his knowledge.

Q. I have been through the valley, and know where the old points are, but can't locate the new points. A. You have not been there since the hurricane.

Q. I have been there since the hurricane, but not since the Stoneman House was built. A. It is only a little way further up, to the Stoneman House, on the left hand side of the trail, up towards old man Lemmon's. After he got his money, he told a great many people that came up from below, wealthy people and people that were traveling, that that was where he intended to put a hotel—right where the Stoneman House was put up.

Q. I will ask you a question outside of this. I think your acquaintance with the valley will enable you to throw some light on it. I believe I asked you about how much ground there was left there for pasturage for tourists and campers? A. No; you didn't.

Q. Will you please state what proportion of that valley—how much land there is there that is dedicated to the use of tourists, and campers, and persons who wish to turn their animals loose? A. Well, from the old Hutchings line, where the gate was when the road ran right up through the meadow, they have all the ground between the river and Harris' fence. I should judge, to the best of my knowledge, there might be in that little meadow, as you go up to Mirror Lake and take the whole ground in, perhaps there may be two hundred acres there altogether.

Q. That is open common? A. That is open ground, and goes on up to Mirror Lake, which the campers have. They can camp all the way, clear to Mirror Lake; but then there is no feed.

Q. What is the character of that open country there, for feed, for pasturage? A. Well, you see, when the rush of the season is, there may be two hundred campers in there. There is oftentimes that in the warm season. Sometimes there will be two hundred in there; and, of course, after it has run a couple of weeks there is no feed at all. They have got to keep their horse up and buy hay.

Q. That is what I was trying to get at? A. That is just the way it is.

Q. It is a fact that the amount of pasturage left out there is totally inadequate to the demands of campers during the busy season? A. There is no show for them at all; none whatever.

Q. They would have no recourse but to purchase hay or take it in with them or purchase it in the valley? A. They have to do it. I have sold them hay myself to take in, because they would know there is no show to pasture in the valley.

Q. What is the character of the soil there? Is it rich, alluvial, or scarce? A. Yes, sir; that is good ground. Opposite the Harris house, between there and the river, it is good soil. There is some fern; wherever there is fern it is rich ground; but as you go up towards Mirror Lake there is a great deal of sandy ground where there don't anything grow. And in regard to a man keeping a cow in there to-day—a man down at Barnard's, or even at Cook's old hotel, if he had a cow and turned her out at six in the morning and drove her in at night, that cow would starve to death in two months, to the best of my knowledge, because there is nothing for her to get, it is all fenced up.

Q. Mr. Brightman, you have been a long time living there, what is your idea, predicated upon your knowledge of actual occurrences there, with regard to the granting of exclusive privileges to individuals to do the business of the valley? A. Well, it is all exclusive right now, in regard to the saddle train business, it is Coffman & Kenney, and nobody else.

Q. And with regard to the use of land? A. Yes, sir; the use of land; there is none to be got.

Q. I understand from your answer, Mr. Brightman, that the valley is absolutely under control of the persons to whom it has been let by the Commissioners, to the exclusion of all others; almost the entire valley is in the hands of persons who hold it under leases from the Commissioners? A. Yes, sir; the exclusive right to Washburn, and Kenney & Coffman for the saddle train business, with the exception of Barnard. That is the way I understand it.

Q. Mr. Barnard is the only exception? A. He is the only one that has got anything in there to turn his cattle and horses in.

Q. And those three men control absolutely the business of the valley, as I understand it? A. Yes, sir.

Q. Well, now, I will ask you another question. Are persons from the outside who have anything to sell, allowed the free access to that valley and the privilege of selling there? A. Yes, sir; but I will state this: we will suppose that you go in there with a load of hay, as a rancher—

Q. It would be a very violent supposition, but still it is possible. A. I want to make this thing plain to you. Not that I expect ever to receive a dollar out of that valley from this on. But to-day, if you had a load of hay and went in there to sell it, there is no one to sell it to except campers; you might go in there with a load of hay and not find any campers there. What are you going to do with your hay? There are no houses except the old Black stable that you could get to put your hay into to store it; so you have got to take your hay out. They don't let that.

Q. Couldn't they sell it to some of those men who are enjoying those

exclusive privileges? A. They don't want to buy hay, because they are going to raise it.

MR. GARDNER: Do they raise sufficient hay for their own use? A. Well, yes, they have.

Q. Don't they sometimes have to purchase hay and have it hauled there? A. Yes; I have bought hay myself; when I owned that ranch I bought hay. Of course, if they get out of hay they would have to send out to Washburn's, or send out somewhere, and let them bring it in there; but people won't bring it in, because they won't take their chances, to take it in there and can't sell it, and can't store it. Of course, they would want to store it, because they don't want it to be left out-doors, and they won't take it; of course, they have done it up to the last year or two. There has been hay brought in there, a great deal of it, but I am speaking of the present time. The buildings have been taken down that a man could have stored in, except that one stable. I saw how the thing was going, and that was why I applied for that stable.

MR. TULLY: Then I understand that while persons can take their produce in there to sell, yet the condition and management is such as to deter people from doing it? A. That is the way you can see it, and I look at it in the same light. Not that I censure the Commissioners. I think that they have done wrong; that is all I can say. If it is mismanagement I don't know; it is managed, any way, and the rights of people have gone, because when I went in there there was good times and everybody had money, and if we couldn't get a dollar for a horse we would take him for two bits and have just as good a time until they had gone out. Now, gentlemen, I have told you to the best of my knowledge; I don't favor anybody; I have told you just as near as I can.

MR. TULLY: We are not here to take any advantage of anybody; convict anybody. We want to get at the facts. A. I have seen that by the meetings.

MR. TULLY: I want to get at the facts. I am not representing anybody but simple truth and justice with regard to these charges, and propose, if I can, to get to the bottom of them, and the result of our investigation will be given to the public for what it is worth. A. I am very glad you asked me just as you did, because I didn't know exactly how to get at it, but I wanted to tell you just what I did and no more. If you ask me more I will answer. I have been in the valley and have taken items, and think I have been pretty near run out of the valley.

Q. I want to ask you one more question, and I know that you are competent to answer those questions. With regard to the destruction of timber, trees, and burning off the young forest there, what do you know about that? A. I know it all; I think I do; I won't go into any small items, but I will tell you in a few words.

Q. State what you know with regard to the condition of that valley today, compared with what it was when you went in there. Be as brief as you can, to get at the main facts, whether forests have been cut down, any number of trees cut down unnecessarily, and in what condition the valley is now as compared with what it was when you went in there? A. The year I packed in I packed in the doors and windows of Black's hotel; that season there was a few trees cut for the sills of that building. There was a good deal of complaint. I don't know who made the most complaint, but I think Hutchings was at the bottom of it, and then there was others. Everybody was talking about it; it was the county talk, that they ought not to cut the trees; but there was a few trees cut for the Cook hotel, known as Black's, and then the next tree was an old stump right there

by Hutchings' saloon, that Johnny Smith had. Johnny wanted to get it down, and Hutchings didn't want it down, and they liked to get to fighting about that old stump; but one day the stump was down. Up to 1880 there was no more trees cut to amount to anything—nobody knew anything about it. They may have cut a few trees up in the rocks, but it was generally understood that no more trees were to be cut. Since 1880 they have been cutting trees everywhere, and I think the Commissioners, on the line of these new roads around the valley, might have skipped a few trees which they did cut; but the motive was, I think, to run a straight road as far as they could; where they could see a long piece of straight road to be made they would make it; and they grubbed out everything in connection with the road; and there has been a great many trees cut since; but I wouldn't say what number, because last night you got the testimony of what was in front of Barnard's. I have heard it talked, but I don't know anything about it. I didn't know there was half as many cut as there was; but that is the amount of what timber I know of. There has been a great deal of timber cut. When I went in there and worked for Hutchings, we would hitch up a four-horse team and go all over that Barnard country there, and up towards the Stoneman House, and it was hard work for us to get wood enough for that old fire-place at Hutchings', and to-day you can get plenty.

Q. You mean it was hard work to get wood without cutting it down?

A. Without cutting it down; and the old man wouldn't allow us to cut down a tree. We would go out and pick up wood wherever we could find it. If we would find a tree down, we would cut it up. We would load what we could on the wagon, and the rest was left there to rot.

Q. Do you consider that there has been any wanton or unnecessary falling of timber there? A. I would not testify to that, because I was not interested, and I don't know any more than I think. Me and Conway was riding down the road, and was looking to see what the State paid for grading out them roads, and I didn't take much interest in it, but John thought it could have been done for a great deal less: but that was only a matter of his idea and mine. We thought there had been a good many trees cut out.

Q. Those trees that have been cut down, do you think that they seriously mar the general effect and beauty of the valley? A. Well, there at Barnard's, I think that they have cut trees there that didn't benefit the view a bit; people could have stepped a few feet one way or the other and got just the same view that they have got now.

Q. I understand the ostensible object of cutting those trees was to give a better view? A. That is it; of course, that was it. I know that right there at Cook's hotel there was a fine black oak tree there, that was right between the Yosemite Falls and the front door, and Mr. Cook wanted the tree cut down; I don't say that he wanted it, either; I wouldn't say certain how that was brought up, but I know that there was a good deal said about the tree, and the tree was cut down; and there was a big pine stood right in front of the bar-room, that they were afraid would fall on the house. That tree ought to have been felled, because it was liable to fall. If the wind happened to blow up, it might kill forty men or horses. The tree was rotten, anyway, and they cut the tree down. I thought it was a good thing.

Q. The security of the building required it? A. Yes, sir; it was the security to life. I just cleared my life of a falling tree once, myself. When persons see a tree coming they don't know which way to go; they get con-

fused, and are liable to get killed. That was a big tree. I guess it was nearly four feet through, but it was not safe to have it there; it was rotten.
[Adjourned to the call of the Chair.]

MONDAY EVENING, February 11, 1889.

Cross-examination of George Barnes.

MR. GOUCHER: Mr. Barnes, you said in your testimony at the last meeting of this committee, that you never made any demand before I came here. These were your words: "I never made any demand before I came here, to Mr. Goucher." What did you mean by that? I didn't understand that. Did you mean that you made a demand of me? Answer—Well, I asked you for the back pay, of course.

Q. That was here? A. Yes, sir; well, I did make a demand.

Q. Where? A. At the time Archie Leonard brought you down there, I asked you if we would get it, and you said we would have it.

Q. State the circumstances; how did you happen to invite me down there? A. Well, we were there; the crowd was there, and we came together and told Archie to go up and bring Goucher down.

Q. That was at the last June meeting, wasn't it? A. Yes, sir; and then you and McCord were going to go up to the hotel about the same time, I think, and Archie spoke to you, and you said: "Well, I must go down and see the boys before I go up." Mr. McCord wanted you to go, and we asked you, and you came down there and told us—

Q. I meant you and the other workingmen that were interested? A. Yes, sir; you told us: "I will see that you get your pay." Those are the words you said.

Q. That was the second time that this question about paying for the number of hours over eight per day that had been worked had come up, wasn't it? That was the second time that the subject had come up before the Commissioners? A. I think it was.

Q. Don't you remember that in June, 1887, that I introduced a resolution before the Board providing that you gentlemen who had been worked more than eight hours a day should be paid for the excess, for the overtime? A. Yes, sir.

Q. You remember that I did that, don't you? A. I heard the boys talking about that; yes, sir.

Q. Well, don't you know that the Commissioners at that time—that is, in June, 1887, ordered that extra time paid for; didn't you hear that also, in 1887? A. Paid for?

Q. May be you don't understand me. Don't you remember that in 1887 the Commissioners ordered the extra time paid for? Don't you remember that the Commissioners, in 1887, at their June meeting, ordered that the workingmen should be paid for the extra time? A. Yes, sir.

Q. And your amount of time would entitle you, under the resolution, to receive about \$34? A. Yes, sir.

Q. Then you were not paid up to the June meeting, 1888; you were not paid that \$34? A. No, sir.

Q. Now, in June, 1888, is the time when you and the rest of the workingmen called my attention to the matter, wasn't it? A. Yes, sir; I think it was, if I remember correctly.

Q. And I believe I expressed my surprise to you gentlemen, that you had not been paid; isn't that true? A. Yes, sir.

Q. What I told you at that time was this, wasn't it: that I would inquire of the Guardian and the Secretary and ascertain why it had not been paid? A. Yes, sir; I remember your saying something like that.

Q. Don't you know that the Commissioners, at the June meeting in 1888, still again ordered it paid? Don't you know that last June when we were there that we again ordered it paid? A. Yes, sir.

Q. Now, as to why it has not been paid, you don't know, do you? A. No, sir.

Q. You stated in your last examination that there were about thirty acres of ground allotted to the campers? A. Yes, sir.

Q. Which ground did you refer to at that time? A. That up by Harris'.

Q. Don't you know that last June, June, 1888, the Commissioners assigned other ground to the campers besides that? A. I don't know; I didn't hear nothing about it.

Q. Didn't you hear that they had assigned the ground formerly used by Leidig for garden purposes, and also some territory towards Bridal Veil Falls from Leidig's, to the campers? A. I don't remember it.

Q. You worked there last summer, didn't you? A. I worked until July.

Q. Didn't a great many campers camp on the south side of the Merced River, in the vicinity of Leidig's old hotel? A. Yes, sir; they did.

Q. Then it must have been by permission of the authorities? A. Yes, sir.

Q. Do you know whether the Guardian objected? A. I don't think he objected; I didn't hear him objecting.

Q. Where did the campers camp; on the old camping ground, in the neighborhood of the houses, or on the new ground in the neighborhood of Leidig's hotel? A. Well, the most—there was some camped up by Cook's; well, I think the biggest camp was down by Leidig's hotel.

Q. Do you know how many acres were embraced in that tract at Leidig's hotel? A. No, sir; I don't.

Q. Do you know whether there were any meadows in that tract? A. Not on this side of the river.

Q. Which do you mean by "this side?" A. Well, Leidig's side.

Q. Isn't there the meadow that Liedig used for pasturage purposes? A. Yes, sir; there is.

Q. You had forgotten that? A. I had forgotten about that; I was looking right up by Cook's.

Q. You don't know how many acres there are on the south side of the Merced River allotted to the campers; I mean, of course, in the neighborhood of Leidig's place? A. No, sir; I didn't hear no one say nothing about—I heard the campers were down there camping, but I didn't hear them say about giving it to the campers.

Q. Well, you don't know how many acres they were allowed to occupy, do you? A. No, sir.

Cross-examination of Fred. Brightman.

MR. GOUCHER: In your testimony at the last session of this committee, you stated, "I went in there," meaning in the valley, "first, and worked for Hutchings; I went in to buy his pack train." Will you state to the committee what year that was? Answer—Well I never set it down.

Q. Well, about? A. I should judge it was about 1867 or 1868, as near as I can remember.

Q. About 1867 or 1868. Do you know who the Commissioners to manage the Yosemite Valley were at that time? A. Well, I don't know them all.

Q. Well, do you remember any of them? A. Mr. Raymond, Mr. Ames, Mr. Madden, Mr. Ashburner; that is all that I remember of; that is the best of my knowledge.

Q. That is all that you can name, is it? A. Yes, sir.

Q. Well, the Governor? A. Who was the Governor?

Q. I suppose it was Low, wasn't it? In 1868 it was Haight? A. I don't remember.

Q. The Governor, whoever he was at the time? A. The Governor.

Q. Now these troubles that you speak of here, that you had with Kenney in regard to running these saddle trains; did the Commissioners have anything to do with your difficulties with Kenney? A. None at all.

Q. Now you spoke about having a talk at one time with Mr. Washburn in reference to a barn which you called Washburn's barn, upper barn; that you had a talk with Washburn about it, and subsequently that you applied to lease it. When was it that you made that application to lease that barn; I don't care for a year or two? A. I didn't keep any account; it was the year that Lemmon died, in 1878.

Q. About 1878? A. About 1878; 1878, I think; about that.

Q. From the time you first went in there up to the time that Lemmon died, or up to the time when you applied for this barn, was anybody on the Board of Yosemite Commissioners who is now a member of the Commission? A. Mr. Ashburner was one.

Q. He is not a Commissioner now; has not been for some time; has not been for several years. A. Well, I don't know who the Commissioners are. They have been changing them so that I have never taken any notice.

Q. Ashburner is not, but Madden is. He is a Commissioner yet. A. That is what I say.

Q. You said Ashburner; you meant Madden, did you? A. Yes, sir; I meant Madden.

Q. Outside of Madden, is there anybody else on the Commission now who was on at that time; that is, from the time you first went into the valley? A. Is Ames out of it?

Q. Ames is not a Commissioner now. A. Then I don't think there is any.

Q. Do you know why you did not get this barn? A. No, sir.

Q. To whom did you make the application? A. I made the application, a written application, and sent it before the Board of Commissioners.

Q. You don't know why you didn't get it? A. I never heard a word of it, from that day to this.

Q. You have spoken about certain parties afterwards running a saddle train in a combination; that is Washburn, Kenney, Harris, Stegeman, and Hutchings. A. Coffman & Kenney.

Q. No; that was before Coffman's time, that you were referring to. You say you knew that there was a combination because it was common talk amongst everybody, and they told themselves. That is what you testified. A. Well, I think Coffman had bought Hutchings out at that time.

Q. Do you know whether the Commissioners knew anything about the combination between these men? A. No; I don't.

Q. Do you know whether these men that you named were paying any leases for the privilege of running saddle trains at that time? A. I don't think they were. I know that Kenney was not paying any lease, because he got his lease on the ranch, and that entitled Harris and Kenney—Harris

never had no title; he had no saddle train; even George Kenney, at that time had no saddle train; at the time he got the ranch.

Q. I am referring to this testimony, Mr. Brightman; I will read it to you: "What year are you now speaking of; what year did this other transaction take place?" You were speaking of the time after you failed to get the barn. "That was in about 1870. I never have kept any dates, because I was working by the month and had no reason to." A. About twelve years ago.

Q. "But you will see that Kenney's and Harris' and Stegeman's, and Hutchings' saddle train was running against Washburn at this time." And then the question is: "That was about 1870?" And then the answer is: "Yes, sir." Well, now, what I ask you, in this connection, is this: Were these men paying for the privilege of running saddle trains in 1870; did they, at that time, to your knowledge, have any lease from the Commissioners? A. At the time I went out of the saddle train?

Q. In 1870? A. At the time I went out of the saddle train, I don't think there was any of them paid any leases.

Q. I am not asking you when you went out of the saddle train, because it don't cut any figure here; it is not material; but I read your answer, and I am asking you if, at that time, the time you referred to, when Kenney, Harris, Stegeman, and Hutchings— A. No, sir.

Q. And then there was not any leases to these people? A. No; there was not at that time. All leases to run saddle horses were to George and me. There is where I first started. George and me applied for a ten-year lease to run the saddle horses, and for that ranch; that was the time.

Q. Now, Mr. Brightman, when these men in 1870 were running saddle trains in there, and when you were running saddle trains in there, where did you get feed for your horses? A. Well, I raised about fifty tons of hay off of that field there.

Q. Which field? A. Off the old Lemmon field.

Q. Was that inclosed at the time? A. Yes, sir.

Q. Where did these other gentlemen that were running saddle trains get their feed? A. Well, they didn't have any.

Q. The horses went without it? A. They turned them out.

Q. Turned their horses out? A. They fed about a quart of barley a day, in the morning, and then they turned their horses out.

Q. Where did these horses get their feed; wasn't it on the meadows of the valley? A. Yes, sir; they had the Bridal Veil, and they had all on the side of the river where the Stoneman House is.

Q. These horses, then, at that time, were allowed, after being turned out, to run at large all over the valley and over its roads and trails? A. They were.

Q. Were any cattle allowed to run at that time? A. Everything run at large.

Q. About how many horses were kept in the valley during the time that these men were in the business? A. Washburn kept about forty head, Hutchings had about sixty head, Stegeman had about thirty head, and we had about thirty head—thirty-three.

Q. Where did the campers get their feed? A. Well, the campers used to buy hay of me if they were not satisfied with what they got on the outside; and I used to have to buy hay, too.

Q. In 1870 you did not import any hay from the outside, did you? A. Oh, yes, we hauled some hay in.

Q. Where from; over what road? A. Over the Coulterville road, and over the Oak Flat road, some.

Q. Was the Oak Flat road completed in 1870? A. Yes, sir.

Q. Are you sure about that? A. Well, they hauled the hay in both ways, I know, at that time.

Q. Over those two roads? A. Yes, sir.

Q. You are positive on that point, are you? A. I am positive we hauled hay in at that time that I went out. It might have been a difference in the years; I won't say about the date, because I am not certain about the date.

Q. When you first went in there conducting a saddle train business, was there any wagon road leading into Yosemite? A. No.

MR. HOOK: What year was that? A. Well, I say twenty years ago; about twenty years ago; I don't remember exactly.

MR. GOUCHER: About how many years did you do business in the Yosemite Valley before there was a wagon road constructed to the valley? A. About four years, as near as I can remember.

Q. You spoke, in your testimony at the last sitting of this committee, of a meadow of about—you didn't mention the number of acres—of a meadow that had been taken away from Leidig. What meadow is that? A. On the west side of the river, right opposite the house.

Q. On the same side as the Leidig hotel? A. No; on the other side.

Q. Now, when was that taken away from Leidig? A. It was taken away from him, I think, either three or four years ago.

Q. Was it inclosed? A. Inclosed. I hauled the fences for it.

Q. Do you know anything about the circumstances under which it was done? A. Well, Mrs. Leidig told me—

Q. I don't care about that. Nothing except what you were told? Do you know anything of your own knowledge? A. I was told, and I was over there one day when Charlie was keeping the stock out of the field; and that the fences were down and they couldn't keep the stock out, and Charlie was sent over there to keep the stock out, and it was impossible for him to keep the fence up, because nights they would tear it down, and they would eat out the whole field.

Q. You used this expression: "Some one of them said that if she leased it it would throw her out of the claim." That implies that she was afraid to apply for a lease for fear she might lose—. A. No; I stated it differently from that.

Q. That if she leased it to third parties—. A. She leased it to Coffman & Kenney, and when she demanded the money for the rent the Guardian told Kenney not to pay Mrs. Leidig, but to pay him.

Q. That was on the principle, as you understood it, that tenants there—lessees—were not permitted to sub-let premises? A. Yes, sir.

Q. And that the Guardian, Mr. Dennison, demanded the pay from the sub-tenants? A. Yes, sir.

Q. From Mrs. Leidig's tenants; sub-tenants to the Commissioners. Now, Mr. Brightman, here is another question that I want to call your attention to. I will commence three or four questions back and read: "Mr. Gardner: How do you know there is a ring? How do you know all these things? A. I don't know, any more than what we call a ring. They say that is a ring. I don't know it. Q. You don't know whether there is a ring or not, of your own knowledge? A. No. It looks like a ring to me. I don't say it is a ring." I don't understand your explanation when you say that "It looks like a ring to me. I don't know that it is a ring." Above you said, "I don't know whether it is a ring or not." What is your meaning in regard to that? A. Why, it was all run by the saddle train men.

Q. What do you mean by "it?" A. Well, the three saddle trains are run with the Commissioners. It looks that way to me.

Q. The three saddle trains? A. Well, there is Coffman, Kenney, and Washburn.

Q. It is one lot of horses, isn't it? Q. It is all one lot of horses.

Q. And under one management? A. All under one management.

Q. You say that is what looks like a ring? A. The Commissioners, in my judgment—now I am just testifying for myself—the Commissioners gave them privileges outside of other parties, and that constitutes what they call a ring, or what they term as a ring.

Q. When you had Lemmon's ranch you had that privilege so far as that ranch was concerned, didn't you? A. What?

Q. The privilege of using it for raising hay on it, and selling it? A. He had. I suppose it was Lemmon's. That field was Lemmon's. He fenced it in. I don't know how he got it.

Q. How did you get it? A. I cut the hay on halves. I had one half.

Q. Who did you apply to? A. I applied to Lemmon.

Q. Didn't you know that Lemmon leased it from the Commissioners? A. No; I don't think he had a lease.

Q. You don't think he had a lease; that he just fenced it in, and was using it regardless of the Commission? A. Yes, sir.

Q. What seems to you to be a ring is this: that certain fields or inclosures in the valley are leased to Coffman & Kenney and Washburn, or whoever constitutes the parties to that saddle train management, and that they are allowed to run saddle trains? A. That is it.

Q. Is that the only thing that you have observed in Yosemite that strikes you as being a ring; is there any other thing? A. Well, there is Mr. Leidig had to close his hotel up, and it is all run by Cook and Barnard; and the general supposition is up there that Barnard will be froze out pretty soon, the way it is going on.

Q. Well, now you say that is the general supposition; how did you find that out? A. Well, I hear it talked around.

Q. Just mention the people that you heard, please; we might need them as witnesses? A. I don't know any particular person.

Q. I would like to have the names, because they are nearly all here from the Yosemite. Who have you heard mention that, if you remember? A. Well, at the station it is all talked over there by the men, where I have been to work there.

Q. Just please name the men; those that you heard express themselves that way? A. I can't refer to any particular person that I know of.

Q. You are sure that you have heard it discussed? A. Yes; I have heard it talked that way; it is common talk.

Q. Common talk, and you are unable to name anybody? A. Well, I couldn't say any particular person.

Q. Didn't you hear Mr. C. D. Robinson talk about it? A. No, sir; not that I know of.

Q. Never? A. No, sir.

Q. Did you hear Mr. Harris? A. No, sir; no particular man. I wouldn't say that I have heard any particular person make the remark, but I have heard hundreds of people make the remark; it is common talk.

Q. Were these people residents there or travelers? A. People that were around Mariposa.

Q. In Mariposa? A. In the valley; we have always talked it that way.

Q. You couldn't have always talked it that way prior to the formation of this management? A. That is, for four or five years past.

Q. And that is because these fields and meadows have been used? A. It looks as though they were running to help one another, or the Commissioners favored them in preference to the outsiders like me. Now, I applied for that barn; I never got it; why I didn't get it I don't know. I applied for a carriage right, and offered \$500 too.

Q. You are not able to name anybody that you heard; is that so? A. No; I wouldn't say any particular person, because I don't remember.

Q. Now, Mr. Brightman, you spoke about Mr. Leidig having to leave; having had his place closed up. Do you know why it was closed up? A. Well, because—one thing was that they favored the other hotels more than they did them.

Q. Who are they? A. Well, that is Cook.

Q. You say they favored the other hotel. Who do you mean, the Commissioners? That the Commissioners favored Cook? A. I don't know how to get at that. I have heard a great deal said. Mrs. Leidig has told me—

Q. That was before she left there, wasn't it? A. Oh, long before; for years.

Q. Do you know why Mr. and Mrs. Leidig left? A. No; I wouldn't testify to anything of that kind, because I don't know.

Q. Don't you know, Mr. Brightman, that they voluntarily sold out their right to run a hotel business there, outside of the knowledge, and outside of all request, or wish on the part of the Commissioners, and that they left after such sale? A. Well, my knowledge as far as that goes, Mrs. Leidig has told me lots of grievances about the way the Commissioners put questions to her, and told her to do this, and told her to do that, and she didn't know which way to do; and of course now, in regard to the field, some of them told her not to lease it, and others told her to lease it.

Q. I am not asking about the fields. I am asking about what you know in regard to her leaving that hotel? A. Well, I don't know anything about her business, any more than what was talked around the house.

Q. You never talked with her after she left the valley on the subject, did you? A. No; I did not.

Q. You don't know whether she sold out or not? A. I don't know whether she sold out or not.

Q. Did you ever hear that the Commissioners compelled her to leave? A. No, sir.

Q. Here is something, Mr. Brightman, that I want to ask you about: in one of your answers you used this language: "I have been in the valley and have taken items, and think I have been pretty near run out of the valley." What did you mean by that? A. Taking items?

Q. Yes? A. Well, I see what was going on.

Q. Well, when? A. I see that I didn't get any lease, and that George Kenney—

Q. That was how long ago? A. Well, that was in 1870. I am not certain about the dates.

Q. Before 1880, was it not? A. Well, about that time.

Q. Well, was it before 1880, or after? A. Before that, if anything.

Q. Is that the reason you say that you think you were pretty near run out of the valley? A. Well, I think that is one thing.

Q. What else makes you say that? A. Well, I put in two applications for a lease and I didn't get neither one of them. That is on my own part. I don't think they had any reason why they shouldn't let me have a lease.

Q. That was before 1880, was it? Both of them; both of these applications? A. Yes, sir; I think it was.

MR. TULLOCH: You spoke awhile ago in relation to an answer to a question of Mr. Goucher, something about certain moneys; that the Guardian didn't allow certain moneys to be paid to Mrs. Leidig, and directed that they should be paid to certain other parties? A. Yes, sir.

Q. Who were those other parties? A. Kenney & Coffman.

Q. You also stated, did you not, in answer to the question of Mr. Goucher, that you thought they were paid to those parties, on the principle that she had no right to sub-let them, did you not? A. Well, it was generally understood that a person had no right—well, it was talked; she didn't know what to do.

Q. You said to Mr. Goucher you thought it was on that principle. Now, did you merely think so, or did you know it to be a fact? A. Well, I know it to be a fact that they would not allow her to have the money.

Q. She didn't get the money? A. She didn't get the money.

Q. How long after that did she leave? A. Oh, I should judge it was five years or something like that, as near as I can remember.

Q. Is there any other harsh action toward her in that respect or in any other respect? A. I wouldn't testify—of course they have told me their grievances, but I don't remember, and wouldn't testify anything one way or the other.

MR. GARDNER: You stated all you knew last Friday night? A. Yes, sir.

MR. TULLOCH: Was she frozen out, or kicked out, or did she leave of her own accord? A. Well, they feel as though they were kicked out, pretty near.

Q. Was there any way by which they might make a living, when they left? A. Well, if they could have had a show to have got along—I have been there for the last—

Q. Your idea is that when they left, they left because they had no means of subsistence, and could get no privileges, or couldn't make a living in the valley. Is that a fact? A. Yes, sir; they could not work with any peace. They worked hard, but they had to fight for the travel, and stages would run by them; and that field—I hauled the rails for that field, for both of them, and fenced them in, and you see how it ended, and they took the field away from them.

Q. Then they were practically exiled; they had to either get out or starve to death, had they? They had nothing to live on? A. They have always made a living.

Q. As compared with other parties in the valley, it was hard times with them, was it not? A. It was hard times, and he had to work hard for the travel, and it always looked to me as though the stage company didn't treat them just right, because they run stages around the other side of the river.

Q. Do you think their hard times were influenced by favors which were shown to other parties, and yet denied unto them? A. Well, that is the way it looks to me.

MR. HOOK: Was that during the present Commissioners' term of office? A. Yes, sir.

Q. Do you think the Commissioners were opposed to Leidig's staying there? A. Well, I couldn't say that they were; but, then, they ought to have made the stages go to each hotel. I suppose after awhile the Commissioners did stop them, because they went by there afterwards.

Q. Did the Commissioners know anything about their going on the other side of the river away from them? A. Well, I wouldn't say that.

Q. Do you think that after the Commissioners were informed of it that the stages run by there? A. No; I think not; I think not. After the

Commissioners found out that they were running around there it was stopped.

Q. Then the Commissioners stopped it? A. I don't know. I says to Washburn myself: "Just as quick as you start running around that house, it is going to hurt you worse than it does them." And so it did. A man testified to me to-day—Hiram Rapalje—that he carried whole loads of passengers around there and drove them right by the house; and they wanted to stop there.

Q. Do you know whether the Commissioners were guilty of allowing them to drive around on the other side of the river, away from Leidig's hotel? A. I don't know; I couldn't say that they were.

MR. GOUCHER: Didn't you hear that was stopped promptly, upon the Commissioners being informed? A. No; I didn't hear that.

Q. You know it was stopped? A. I know it was stopped; yes, sir; the boys told me.

Q. While Cook was running his old place, and Barnard running the present hotel, and Leidig the Leidig hotel, do you know where the Commissioners made their stopping place? A. Oh, they stopped at both houses.

Q. There were three at that time? A. Well, they stopped some at Mrs. Leidig's; the most of them stopped at Mrs. Leidig's, but some stopped at all three hotels.

GEORGE BARNES.

Being recalled, testified as follows:

MR. TULLOCH: In your testimony to Mr. Goucher awhile ago, did you or did you not say something about a new pasture, or a lot of ground being allotted to the campers, upon the south side of the Merced River? Do you know that it was, or that it was not given to them? Answer—I do not, sir.

Q. You don't know it for a certainty? A. No, sir. There were a lot of campers camped down there.

Q. Well, you don't know for a certainty that any ground was allotted to them by the Commissioners, or by the representatives of them, at all? They may have gone and camped there or not? A. I never heard of any. I know there were lots of campers camped all over the valley last season.

Q. You don't know whether ground was allotted for that purpose or not? A. No, sir; I don't.

MR. HOOK: Did a camper have a right to camp on any ground without its being allotted by the Commissioners? A. I don't think they had. On the camping ground?

Q. Yes; on the camping ground.

MR. TULLOCH: Do you know anything at all about that, whether they have or whether they have not? A. No, I don't. They generally camped down there by Leidig's every season, because I have always boarded at Leidig's.

Q. You have no absolute knowledge of that matter at all? A. No, sir; I have not.

MR. GARDNER: Hasn't the Guardian the charge of that? A. I think they have got to go to the Guardian to see.

MR. HOOK: If they went to the Guardian, he couldn't do anything without the authority of the Commissioners, could he? A. I know a great many campers do camp there without going.

Q. Without going to the Guardian? A. Yes, sir.

[A. Mazzanini was sworn by the Chairman to correctly interpret the testimony of Angelo Cavagnero.]

ANGELO CAVAGNERO.

Being sworn by the Chairman, testified as follows:

THE CHAIRMAN: Where is your place of residence? Answer—In the Yosemite Valley.

Q. What is your business there? A. Storekeeper.

Q. Will you make a statement to the committee regarding attempts to evict you from the valley, and from your store and building? Address yourself to the interpreter, and he will address himself to the reporter. Tell him in a few words, what was done to you there? A. In 1881 I bought the place that I have at present, from Mr. Harris.

Q. You kept the store in 1881? A. I bought at that time, of A. Harris.

Q. You bought Harris out in 1881? A. Yes, sir.

Q. What kind of a store did you keep there; general merchandise? A. General merchandise. Drygoods and groceries.

Q. Do you keep a store there still? A. Yes, sir.

Q. Well, was there ever any attempt made to turn you out of your store? A. Last year they tried to drive me out from there and give the privilege to Mr. Cook.

Q. Who did that? A. The Commissioners.

Q. Well, did you leave? A. No; I am still there. I do the most business with people that camp there; but now they remove; they go up above; they go up by the new hotel.

Q. The fact of the campers removing up to the upper end of the valley has injured your business? A. Yes, sir; when people go up to the new hotel I can't do any business at all.

MR. TULLOCH: You spoke of having been driven out there. How? In what way were you driven out, in what manner? Who spoke to you, and what did they say? A. Nobody drove me off from there, but when the trade goes away from there it is just the same as to say they drive me away from there. When the trade is taken away from me it is just as well to drive me out.

Q. It had the effect of driving you out? A. Of course; people can't live where there is no business to do.

MR. GARDNER: But you are there yet? A. I am there still.

MR. TULLOCH: Your business is not there yet? A. Yes, sir; the same business yet.

MR. CRAWFORD: As a matter of fact the Commissioners didn't do anything to try to make you leave there, did they; to try to break up your business? A. No; they didn't do anything of the kind, to drive me away from there, but they took the trade away from me.

MR. GARDNER: The Commissioners did? A. That is what I think.

MR. TULLOCH: They didn't do anything directly, but they did it indirectly: is that it, by carrying the trade away? A. That is exactly what he means about it. I made an offer to sell my property and improvements there, but they didn't want to buy me out.

MR. CRAWFORD: Isn't it a fact that whenever buildings are put up there, they are to belong eventually to the Commissioners; to go under the control of the Commissioners? A. Everybody that was building in there built with their own money, and parties sold out there and was paid for it, and so I expected to be treated in the same way.

MR. TULLOCH: Do you expect to be bought out or kicked out? A. Well, I don't know about that.

THE CHAIRMAN: The mere fact of your business leaving you was not owing to any act on the part of the Commissioners; it was the campers moving their camp that took your business away from you? A. There is parties in the valley that have forced those people not to camp there, but to move far away to the other place.

MR. GARDNER: Who were these parties that did the forcing? A. Mr. Cook and everybody else that have got their interest up above that place.

Q. Did you pay for the right to carry on business there, to the Commissioners? A. With the permission of the Guardian, I bought Mr. Harris and John Bachecalupi out. I bought Harris out in 1881 and Bachecalupi in 1882.

Q. Ask him how long that lease extended to, that he bought? A. I asked for a lease, but they told me it was not necessary to have one.

MR. GARDNER: Did these parties, Cook and the other fellows—how did they force them; did they force them or hold out better inducements for the campers; how could they force them? A. Anybody that calls there that wants to camp a length of time, inquiring about where there is a place to camp, they will drive them all up there; parties, but I don't know who.

MR. TULLOCH: He just now spoke about parties now driving and inducing other parties to go up to the other place for business and neglecting his, did he not? A. They don't neglect my business, but where they used to camp; they go and camp perhaps two hundred yards from this place.

Q. What makes them camp two hundred yards from there? A. It seems that strangers that go there and inquire about it, the natives—the people that live in the neighborhood there—tell them the place that is away above to camp.

Q. Tell them to go up to the other place? A. Yes, sir.

Q. He spoke awhile ago about getting permission from the Guardian, didn't he, to carry on his business? Did you pay any money for the permission? A. I paid rent.

Q. How much did he pay? A. I always paid \$60 a year rent. Mr. Dennison raised it up to \$120.

Q. He paid \$60 a year and finally paid \$120, did he? A. I paid for two years \$120, but now they fix it that I will be allowed only to pay \$100. It was promised to me that the Commissioners will reinstate the trade. He said to me if I pay \$120 a year, he would try to give me the exclusive right to carry on business in the Yosemite Valley, and they will give me a piece of ground to keep a horse and a cow for my family, but I have not got that land yet. There has been built a fence there about ten or fifteen yards, or twenty, from the store, in the park. The fence is in my way for my business; interferes with my business; when there is a team, it can't easily turn around.

Q. Who had that fence built? A. Mr. Dennison put that up. Mr. Dennison made it.

Cross-examination.

MR. GOUCHER: How many years have you been paying \$120, Angelo? Answer—I have been paying for two years, and, you see, this year I make my application. I can't support the place no more, because I do all my improvements, you know.

Q. You testified that the campers had been camping further up; what did you mean—what place? A. They camp up here; last summer they camped down to Leidig's a good deal, but last year, in August or Septem-

ber, there was a couple of bridges that they showed to people to go to and camp, on the other side of the river.

Q. For several years past the campers have been camping up near the Harris place, opposite the Stoneman House, haven't they? A. Yes, sir.

Q. But there were no bridges across the river at that time? A. No.

Q. Now, this last summer the campers commenced to camp down near Leidig's old place? A. Yes, sir.

Q. So long as they camp near Leidig's place it was better for you? A. Yes, sir; better for me, because I got the trade.

Q. Then your store was in the nearest place? A. Yes, sir; the nearest place.

Q. But later in the season, in August and September, they commenced camping up above again? A. Yes, sir; they fixed two bridges.

Q. After they fixed the bridges? A. Yes, sir; they fixed the place all nice for campers, and this year they camp up there.

Q. Since these bridges have been put across the river, if the campers camp at their old camping ground it will be very easy for them to cross the river on these bridges and get to a nearer store than yours? A. To Cook's.

Q. Nearer than yours? It will be nearer for them? A. Yes, sir.

Q. And that will injure you? A. Yes, sir.

Q. So if those bridges were not there it would be just as well for you as before, wouldn't it? A. Yes, sir.

MR. TULLOCH: Did they go up and leave your business, and go to that other place of business because they were nearer to it and the bridges facilitated it, or did they go there because they were induced to go there by other parties to injure your business? A. When people call by there and inquire where is the place of camping, why, everybody shows the new place to go and camp. So my place of business would be injured, and it would be the furthest one; about a mile further away from my place of business, the camping ground.

MR. GOUCHER: Angelo, is the place where the people tell the campers to go, the same place they have camped for a great many years? A. Before, they camped any place they wanted to. There are too many fences now.

Q. What place do you mean as the camping ground that people tell the campers to go to? A. They asked the question of the Guardian; he shows the camping ground up there.

Q. Which is the place; is it near Harris' place? A. Near Harris' place.

Q. Didn't the campers camp there a great many years? A. They camped there a great many years, but before, they camped any place they wanted to; but now it is fenced in; I saw the Guardian making a fence; they have got no place to camp.

Q. Isn't your trouble because the bridges were put across; isn't that what injures your business? A. Yes, sir; because the bridges are close by the new hotel.

MR. TULLOCH: Did Guardian Dennison or anybody else tell parties to move up to the other ground and thereby injure you in your business? A. Dennison sent all the people up above my place.

Q. Dennison did so?

INTERPRETER: That is what he said; and to camp there where they used to, they have got to have a permit to camp there.

Q. That is, to camp in the old ground, they have got to have a permit? A. Yes, sir.

Q. And in camping in the old place it would benefit you, would it? A.

In 1881 there were no other stores; I was the only one that was conducting a store there; and after they raised the rent they gave the privilege to Mr. Cook to keep a store and put up business there.

THE CHAIRMAN: How many stores are there in the Yosemite Valley now?
A. Mr. and Mr. Cook; two.

WILLIAM G. LONG.

Being sworn by the Chairman, testified as follows:

MR. TULLOCH: State your place of residence? Answer—Sonoma, Tuolumne County.

Q. The first of these charges is: "Misappropriating public moneys and appropriations in relation to the Yosemite Valley?" Do you know anything of that? A. I do not, so far as my knowledge goes.

Q. The second is: "Destruction of public and private property in the Yosemite Valley?" A. I know nothing.

Q. "Unnecessary destruction of timber in the valley?" A. Nothing whatever. I was never in the valley but once, a very short time.

Q. "Clearing and plowing the valley and meadow land?" A. Nothing.

Q. "Debarring the general public from joint and legal use of the valley?" A. I can hardly make any answer. All that I know about the valley is hearsay. I have not been in the valley myself.

Q. You know nothing of your own knowledge? A. Nothing, so far as that is concerned.

Q. "Holding annual meeting with closed doors, in violation of State laws?" A. I know nothing.

MR. GOUCHER: Do you remember when the law was passed forbidding, and how it happened to be passed, forbidding meetings with closed doors? A. I do.

Q. You may just state to the committee for their information, please. You are the only witness who has been on the stand who is familiar with the matter? A. I will state that, being a member of the committee at the time—Senator Goucher also was a member—that the committee, or Mr. Goucher rather, I think, introduced—you drew up the bill; I think it was by you that that clause was introduced, was it not, Senator?

MR. GOUCHER: I believe it was; yes, sir. You or I, one or both of us? A. I think so. I think we drew most of the bill together.

Q. Just state to the committee when that was? A. 1885, I think; the session of 1885. I think it was considered for the better government of the valley that Mr. Goucher and myself—and it was recommended by the committee afterwards—drew the bill up; an amendatory Act to amend the Commissioners, so far as their meeting with closed doors, that they should not be held with closed doors; and also that all moneys received by them for rent should not be paid out, as it had formerly been, without an account; it should be paid over to the treasury; and moneys that would be by a warrant on the State Treasury, through the auditor.

MR. TULLOCH: Those were the essential privileges of the bill? A. And another part, that the Commissioners should not grant any exclusive franchises; that was part of the bill. I don't know what was recommended in parts of the bill; but I think that those were parts of it, and we passed it that session.

Q. [7.] "Violation of State laws regarding the granting of franchises or privileges in the valley?" A. I know nothing of my own knowledge, only hearsay.

Q. You don't know that they have ever been violated? A. Not of my own knowledge.

Q. You don't know that they have not? A. I don't know that they have not.

Q. [8.] "Reduction of rentals to the prejudice of the State's income." A. Nothing.

Q. [9.] "Failure to recognize their own contracts." A. I don't know anything about it. I will state that I have not been in the valley, I think, since 1870, or 1872, or 1873.

Q. [10.] "Withholding from citizens facts concerning the acceptance of the Stoneman House by the Board, and illegally leasing the same." A. I know nothing about it.

Q. [11.] "Rendering useless the district school of the Yosemite Valley." A. Nothing.

Q. [12.] "Neglecting the public roads and trails within the grant." A. Nothing.

Q. [13.] "Employment of State labor upon work for private parties." A. I know nothing.

Q. [14.] "Failure of the Board to properly manage the Yosemite Valley in accordance with the conditions imposed upon the State by the United States." A. I can only judge by hearsay. How far do you go back in the examination? To what years? I have been several times on the committee, the same committee that we spoke of here—

MR. TULLOCH: I don't know how far we go back. I suppose several administrations.

THE CHAIRMAN: We will go back to the commencement of the management of the Yosemite Valley by Commissioners.

MR. GOUCHER: That would take you back to 1864 or 1865. The Congress bill was passed in 1864. I presume the State took charge about 1865. A. The old Commissioners of the valley, Ashburner, and others, claimed that they were appointed for a lifetime, during good behavior, and they took the case to the Supreme Court, and I think the Supreme Court decided against them. Their management, I should consider, was a little loose, but I never heard any strict charges against them. They thought they were the sole managers of the valley, and had a perfect right to be Commissioners as long as they chose. The Supreme Court decided against them, and afterwards there were others appointed. So far as my own knowledge of the valley is concerned, I know but very little about it; but I had had some relations with the Yosemite Committee here, two or three different sessions. I have some idea how they are managed, but I have never seen any charges sustained that were brought against them. There were none particularly in 1885. There was a great deal of talk on the outside, but there was nothing came before the committee that could be sustained. Mr. Briggs, one of the Commissioners—some gentleman had made the charge before the committee that he got away with a mule team, but there was no evidence before the committee that sustained the charge.

MR. GOUCHER: He was a preacher, wasn't he? A. He is not present, is he?

MR. TULLOCH: You don't know whether they did get away with the mule team or not? A. I believe the team was lost. Somebody had it. It was not to be found at that time. They couldn't tell where it was.

Q. Who was charged with taking mules? A. Mr. Briggs, one of the Commissioners.

Q. Does he follow the same calling as Sam Jones? A. I think so.

Q. Have you or have you not an idea that the affairs of the valley have

been adversely managed by the Commissioners, Mr. Long? A. Well, that is a hard question to answer. There is one thing certain: if the Commissioners have granted exclusive privileges, which, by the papers—I think I have read that they have admitted some of them; Mr. Mills admitted them—exclusive franchises—they have violated the letter and spirit of the law; the intention of it, anyway. It was talked over with Senator Goucher and myself, and I think by him it was incorporated in the bill, by Senator Goucher, he being an Assemblyman, stopping the granting of exclusive franchises or privileges. Every one should have an equal chance.

Q. Do you or do you not think that that law has been violated? A. I know nothing of my own knowledge, only from what I have heard. I read, I think, that it was admitted before the Senate committee, or before this committee, by one of the Commissioners.

Q. You really have no absolute knowledge then in the matter? A. No; I have not.

THE CHAIRMAN: Do you know anything about the ground being fenced up in the valley? A. I do not, of my own knowledge. I have heard it since I have been here. I have not been there since 1870, I think, or 1872.

Q. Do you know anything about the roads and trails, how they are kept? If they are kept well or ill? A. No; I do not.

MR. TULLOCH: Do you know whether there has been any eviction of settlers or other parties from the valley? A. I do not.

Q. Anything about wood having been cut in the valley? A. I have heard such things, but I don't know.

Q. Don't know of it? A. Don't know of my own knowledge.

Q. Do you know anything about quantities of land having been enclosed, plowed up, and farmed? A. I have heard there was.

Q. Do you know anything about sections of land having been inclosed by fences? A. I have heard it stated so this evening.

Q. You don't know it as a fact? A. No, sir; as I said before, I have not been in the valley, and have no way of gaining knowledge other than hearing of it. I have heard it said in the last two or three years that the Commissioners have paid more attention to the valley, and it has been better governed than it was before; the finances, for instance; they keep the books in some shape, and you can tell, so I have heard, how they manage the business. In earlier times you could scarcely find a voucher for anything that was paid out.

MR. GOUCHER: No mules have been missing since I have been on the Commission. A. I have not heard it; there might have been; and horses.

CHARLES ANDERSON.

Being sworn by the Chairman, testified as follows:

MR. TULLOCH: Do you know anything about the charge against the Commissioners for the management of Yosemite Valley of having swindled your brother out of his wages? Answer—I only know this much, that he never got nothing, that I know of.

Q. Was he working in the employ of the valley, the Commissioners, or the Guardian? A. Yes; working on the trail.

Q. Who employed him? A. Briggs, I believe, Commissioner Briggs.

Q. What year was that? A. 1880 or 1882.

Q. How long did he work? A. Two hundred and twenty-two days, I believe.

Q. Did he work by the day or month? A. By the day or month; I don't know which.

Q. Was it by the day or month? A. By the day.

Q. How much per day? A. \$5 a day.

Q. How much, if any, money was ever paid for his services? A. I don't know if he ever received any of that. To the best of my knowledge he never received nothing.

Q. He never received anything? A. Not that I know of.

Q. If he had received any, would you have known it? A. Well, I would have known something of it, I guess.

Q. Well, do you know as a fact that he was swindled out of it? You know he didn't get it, do you? A. Well, I am informed so, that he never got it. I was not in the valley all the time. If I had been there, I would have known; but I was not there.

Q. Did he ever bring forward any claim for his money, subsequently? Did he ever try to get it? A. No; I didn't get it so far.

Q. Did he ever try to get it; your brother? A. I don't know. He put it in the hands of Mr. Goucher, I believe, to let him get it if he could.

Q. Who put it in his hands; your brother? A. Yes, sir.

Q. What was ever done in the matter? A. Nothing, so far as I know.

Q. Where is your brother now? A. Dead, and buried. Lying up in the valley, in the graveyard.

MR. TULLY: What were your opportunities for knowing whether or not your brother ever received any of that money? Did you ever converse with him about it, and upon what do you predicate your idea that he didn't get it? A. Well, I have not seen him, probably, since 1879, and he died, and was dead and buried before I saw him again.

Q. Where did you get your idea that he didn't get it—that he was swindled out of it? A. Well, there was no signs of it; when I went there I didn't get only \$2 50. That was all the money that he had, after he died and paid his funeral expenses.

Q. Did you converse with your brother often about the nature of that claim, or debt, before he died? A. Not very often, I did not.

Q. In any conversation that you ever had with him, did he ever state to you that he had never gotten any of that money? A. I had not seen him after he had worked by the day.

Q. Didn't see him after this debt was contracted? A. Not after he got done that contract.

Q. How much was the amount, do you think, that he lost? A. Well, \$1,110.

Q. You said that he sent the account to Mr. Goucher. How do you know that fact? A. Well, I know it through Mr. Goucher. I went there and found the vouchers with Goucher, in Mariposa, that he delivered over to him before he died.

Q. Did you see those papers? A. He read them to me.

Q. What was the nature of those papers? Was it in the nature of an account, demanding payment of this money or this indebtedness? Were the papers that you read there in the nature of a demand upon Mr. Goucher for the wages or money that was due your brother? A. Certainly; by all means.

Q. That was what it was? A. Yes, sir.

Q. Did you have any conversation with Mr. Goucher about it? A. Yes, sir.

Q. What did Mr. Goucher tell you about it, if anything? A. Well, he

told me this way: He couldn't get it from the Commissioners; if he got elected to the Legislature, he would try to get it through that way.

Q. He told you that he had not been able to get it from the Commissioners, and if he was elected to the Legislature, he would try to get the money through the Legislature? A. Yes, sir.

Q. Did he give you any reason why he had not been able to get it from the Commissioners? A. Not yet, so far.

MR. GOUCHER: Let me state, Mr. Tully; it may facilitate that some. The occurrence he speaks of was before I had anything to do with the Commissioners, as a Commissioner, some considerable time.

MR. TULLY: You were not one of the Commissioners at that time?

MR. GOUCHER: No. His brother put this account into my hands. His brother, George Anderson, put the claim in my hands, in 1885, I think.

THE WITNESS: Was it February?

MR. GOUCHER: No. It was just before the June meeting of the Commissioners.

THE WITNESS: It was a good deal before that.

MR. GOUCHER: A month or so?

THE WITNESS: February or March. I know it was one or the other.

MR. TULLY: They were placed in your hands as a private individual?

MR. GOUCHER: I appeared afterwards, I think at the June meeting, 1885, before the Board, at Yosemite, at the annual meeting.

THE WITNESS: That was all, the leases and papers from Mr. Briggs.

MR. TULLY: Did you succeed to your brother's interest in these debts up there, if he had any—his estate, whatever he had left? A. Yes, sir; I meant to pay all that, if I got anything to pay it with; but some of it is not settled yet.

Q. Did you apply there for his assets—for what he had? A. Yes, sir; I can show you that, if you want to see it.

Q. No; it is not necessary. A. I have got the administration papers here, if you want to look at them.

Q. What was the nature of his assets? How much property did you find there—moneys, or other properties? A. Well, I found very little property, very little money, as I told you before; two and a half, I told you.

Q. In money? A. In money.

Q. Did you find any other property? A. Well, there was other things there, but they didn't amount to nothing; some old tools he had been working the trails with.

MR. TULLOCH: Did you find any accounts? A. No, sir; I did not.

Q. Did you find any notes? A. No notes.

Q. You never found any evidences of indebtedness to your brother; that other persons owed your brother, that might have been the result of his lending money out, if he had received that? A. He loaned no money out so far as I know, sir.

Q. You didn't find any evidences of outstanding indebtedness to him? A. No.

Q. Debts due him? A. No; they were all silent on that. If any were indebted to him, they were silent upon that subject. I found out, though, that he owed Mrs. McGlynn \$29 for board. I paid her that.

Q. A board bill that he died owing? A. Yes, sir; he died owing a board bill, and I paid it to Mrs. Glynn, and I guess she can testify to that; she is here, isn't she?

MR. GOUCHER: Yes, sir; I hear so.

THE CHAIRMAN: I understand you to say you have been working in the valley? A. Not me; I have not been working in the valley; only helped my

brother, in 1876, to haul up some timber to South Dome. He was the first one to get on to that.

MR. TULLOCH: How came you to know your brother was working up there? A. Up where?

Q. In the Yosemite Valley? A. I could not help but know it. He worked there from 1884 up until the time he died, more or less.

Q. Do you know he worked there that length of time, two hundred and twenty-two days? A. Yes, sir; I do.

Q. You know he was to have been paid \$5 per day? A. Well, he never got it.

Q. Was that the agreement? A. What?

Q. That he was to have gotten \$5 per day? A. That is what I understand; that is the best of my knowledge. I can't swear to what I don't know.

Q. To the best of your knowledge he didn't get anything for it? A. To the best of my knowledge he got nothing.

MR. TULLY: From whom did you derive the information, that is, who told you he was to get \$5 per day? A. Well, that was reported to me.

Q. Did your brother tell you at any time? A. No, he did not; because I hadn't seen him, and we didn't correspond but very little.

Q. Your opinion, then, is founded upon what you learned there; from those who were supposed to know? A. Yes, sir.

Q. Who, you assume, at least, did know what they were talking about? A. Yes, sir.

MR. TULLOCH: If he had ever received any of this money, would you have had any knowledge of it subsequently? A. I think I would have had some. He done a heap of work there that he never got no pay for at all; that was around the Dome. The timber is laying there yet; that he done a great deal of work where he built his house, getting timber up, and I hauled it up for him, and the timber is laying there yet. After that, he went to build a piece of trail to the Dome, but he could never complete it for lack of means.

Q. Who was he working for at that time? A. Nobody but himself. That he can't charge anything for, I guess. The valley wouldn't allow him anything for that, I reckon—cutting roads and trails.

MR. TULLY: That was his own business? A. That was his own business, I reckon. They are there yet for anybody to look at, if they want to go to see them.

MR. GOUCHER: What time was it that George Anderson, your brother, died? A. You know very well what time he died.

Q. I did, but the date has escaped my mind. A. He died in 1884, May eighth; the eighth day of May. Mr. Clark could testify to that; he is here. Mr. Leidig can do it, too.

Q. Your word is good enough for me. A. That is all that I can tell you. If you don't doubt my word, that is all right.

Q. If I did, I would tell you, but I don't. A. You can, just as well as not.

Q. I never said anything about doubting your word. You were the first party that mentioned that. Nobody else expressed anything in regard to doubting your word. A. I will testify what is right. That is what I came here to do.

Q. I had merely forgotten the date. A. No; you didn't forget, I guess. Your recollection is not that bad.

Q. Well, I have a great many friends who have died, and I can't remember when each one died. A. Oh, yes you do; pretty good recollection.

Q. Well, you are under oath, and I suppose you have got no right to question my memory at all. It is as much as most men can do to take care of their own. A. That is so; you are right about that. You know very well, when I came to ask you about the papers, you told me you gave them over to the Commissioners, the whole bunch of them.

Q. That is true, sir; that was a fact. A. Well, yes; I believe it is a fact too. I never saw them after you read them to me that time.

GEORGE E. SPRAGUE.

Being sworn by the Chairman, testified as follows:

MR. TULLY: Where do you reside? Answer—I reside in Groveland, or two miles from Groveland.

Q. Do you understand the nature of these charges that you are going to testify about? A. I have read something of them in the papers.

Q. Are you acquainted in the Yosemite Valley? A. Yes, sir; I was in there in 1858, 1864, 1869, and every year since, except 1879, 1878, and 1883.

MR. TULLOCH: Do you know anything as to the misapplying of public moneys and appropriations? A. I do not.

Q. "Destruction of public and private property in the Yosemite Valley?" A. Well, there has been considerable timber cut there and some houses torn down this last season. I have seen them torn down—saw that they were torn down. I don't know anything more about it than that.

MR. TULLY: Of your own knowledge who tore them down? A. I do not.

Q. To whom did those houses belong, if you know? A. Well, one of them was the old Black hotel, that the State bought by an appropriation, and the other is what is termed the Leidig house.

Q. You simply know that they were torn down? A. They were torn down, yes, sir; this last summer.

MR. TULLOCH: Do you know at whose instance they were torn down? A. I do not.

Q. "Unnecessary destruction of timber in the Yosemite Valley?" A. Well, there has been some timber destroyed that I think should have been left to stand. There is a good many small trees there that are standing yet, that should be cut down. When I first went there, the undergrowth was comparatively limited, and fine meadows; and since then they have been destroyed by debris coming down from the mountains, in some cases, and in others, overgrown with young pines.

MR. TULLY: I understand that this charge about the destruction of the timber will refer to the destruction of such timber as would tend to mar the beauties of the valley? A. Well, there has been some timber cut that I should think would better have been left standing; especially about the Stoneman House; and some oak trees directly on the line between Barnard's hotel and the lower Yosemite Falls.

Q. How much and what was the general character of those trees? A. I couldn't say how many trees, some pine and some oak.

Q. Whether there was ten, a dozen, twenty, or fifty? A. Well, I am not familiar enough with that portion of the valley to say.

Q. You simply know that a number of trees have been cut down? A. Yes, sir; there was a good many trees, I noticed, that were marked by the Commissioners to be cut down, at their meeting in June, 1887, and they were cut down afterwards.

Q. You assume that they were cut down by order of the Commissioners?

A. Yes, sir; that is what I understood, that they had marked those trees, and ordered the Guardian to have them cut down.

Q. Did you learn what the object in cutting the trees down was? A. To clear the ground around the Stoneman House.

Q. Did they obstruct the view to any part of the valley, or were they simply in the way of the guests? A. They were in the way of guests, and some of them they were afraid in case of a storm would blow against the hotel, and others they thought marred the view of distant points.

Q. Do you believe that the destruction of that timber was unnecessary to the security and proper enjoyment of the valley? A. There was some few trees that I would not have cut down, if I had been manager.

Q. What was the character of the trees? Were they large sightly trees? A. They were large trees—pines and oaks.

Q. Such trees as would have added, if they had been preserved, you think, to the beauties of the valley? A. Yes, sir.

Q. Do you think that their destruction was an injury to the valley, looking at it from an artistic standpoint? That visitors coming to enjoy the beauties of the valley, would like to have seen them? A. They looked prettier than the stumps that were there, and that are still left there.

Q. Are the stumps still standing there? A. Some of them have been dug out. I don't know whether they all have or not.

Q. Your opinion is that there was an unnecessary destruction of timber, looking at it from your standpoint? A. There was some trees destroyed that I would not have destroyed.

MR. GOUCHER: Do you know about how many trees were removed in the immediate vicinity of the Stoneman House? A. I do not. I heard that there was about one hundred marked to be cut down. I don't know how many were cut down.

Q. You heard that? A. Yes, sir.

Q. Have you been there since the house was completed? A. Yes, sir; I was there in September.

Q. You was familiar with the ground before the building was there, wasn't you? A. I have been past it a good many times; was not very familiar with it.

Q. From the appearance of the ground around the Stoneman House when you were there last time, how many trees did you believe to have been removed? A. I couldn't say.

Q. They are not all taken out, are they? A. No; they are not all taken out.

Q. Your understanding was that those that were taken out were to give room around the building, and also to provide for the safety of the building, wasn't it? A. Yes, sir; the most of them.

Q. And you heard also, didn't you, that others were taken out because of their unsightly condition? A. I heard that there was some taken out.

Q. For that reason? A. Yes, sir.

Q. Well, can you make any estimate as to the number you think were unnecessarily cut? A. I could not.

MR. TULLOCK: "Clearing and plowing of the valley and meadow land." A. There has been considerable land fenced in there, and some of it plowed. When I first went there, there was considerable many natural meadows for a person to stake out their horses—get feed for them. Now, those meadows are all fenced in, and there is no show for a camper to get feed for his animal unless he buys it.

Q. About how much of those meadow lands have been plowed up? A. In the Harris place, I think there are about sixty acres plowed up there,

and about twenty plowed near the Stoneman House; and at the old Leidig place I don't know how much there is: some fifteen or twenty acres, I should judge.

Q. By whom was it plowed up? A. By the lessees, Coffman & Kenney, I supposed.

Q. Plowed up for agricultural purposes? A. Yes, sir.

Q. Sowed in grain and harvested? A. Sowed in grain.

Q. Do they cut hay there? A. They cut hay there.

Q. Is that inside of the inclosure? A. Inside of the inclosure.

Q. You say there were about sixty acres in one piece there? A. In one piece, I think about sixty acres.

Q. What part of the valley is that? A. That is what we term the Royal Arch farm; the place that Harris formerly rented.

Q. On the south side of the river? A. On the north side of the river.

Q. Right under what they call the Royal Arch? A. Yes, sir.

Q. Plowed up by Kenney & Co., the lessees? A. Yes, sir.

Q. How much was that land, all, collectively; how much altogether, do you think? A. Well, I should judge something like one hundred acres.

Q. Was it sown in grain? A. It has been sown in grain this fall, and some of it before. Some of it was sown last spring and winter, and some of it was plowed this fall. It has not been sowed before.

Q. In addition to that, how much land did you say had been cleared? A. Well, there was a good deal of that that never has been cleared. The underbrush never grew up on it. The Lemmon place has been under fence for some twenty-five years. That is, he was there the first time I was in there, and in 1864, and he fenced it soon afterward. The second time I was in there, he was there, and fenced in and planted an orchard. That is, one upon the south side and one upon the north side of the river. Afterward, he built a house upon the north side of the river.

Q. Who planted the orchard? A. Mr. J. G. Lemmon.

Q. "Debarring the general public from joint and legal use of the valley?" A. I don't know, except upon the ground that is fenced in; that is all.

MR. TULLY: I understand that question would be directed toward the fencing in of the valley? A. If it was not fenced, why, people could stake their horses there, in the spring of the year, and they would get some feed.

Q. Do this field and inclosures, that have been fenced in, operate as a bar to the free ingress and egress of tourists and visitors who go to the valley, to such portions of the valley as they might want to see? A. No; they do not.

Q. Suppose, Mr. Sprague, that a tourist should want to go into the valley, and should want to go out of the main roads and highways that are made, and to go out into the little byways, and corners, and cañons around there, would these fences operate as a barrier to his freedom of locomotion over and about the valley? A. There is a road outside of all those fences, in the valley, outside of those fences, so that he can go to any part of the valley, except upon those meadows that are fenced.

Q. Then a tourist or a visitor, when he goes there in order to enjoy the beauties of that valley, must follow the roads, or must he not? A. Well, it is difficult getting around the valley except upon the roads, in some places. In some places they go close to the debris falling from the cliffs, and there is no possible show to travel, except upon the roads. In other places there are wider spaces between the fence and the bluffs.

Q. Take one of those roads going up to Mirror Lake, for instance; suppose he wanted to go up to see Mirror Lake, and upon his return he wanted to turn off to the sides and go up into those little cañons and byways, could

he do so without getting over or under or through fences? A. Yes, sir; there is nothing to hinder his going out upon the sides.

Q. He could leave the road anywhere? A. Leave the road and go out as far as he could from the rocks.

Q. Is it not a fact that those roads are fenced in on each side for quite a distance, on both sides of the valley? A. There is a portion of the road between what is termed the old Hutchings place and the Harris house that I have not been over for—well, in fact, I never was over it but once; and I don't know whether there is a fence upon both sides of the road there or not. I don't know.

Q. I was going to ask you if it was not true that those roads are simply lanes between fences? A. It is not; except with relation to that portion of the valley, and I don't know about that.

Q. Is it the case in any other portion of the valley? A. It is not; except on that portion there; right at the old Hutchings orchard there is a lane there for a short distance, and above I don't know. As I say, I never was over the road but once since it was built, and I don't know whether it is fenced upon both sides or not.

Q. How long since you were there? A. On that portion of the road? I was there in 1885; that time I went the round of the valley, but the last time I was there was in last October. I have not been over that portion of the valley, though, since 1885.

MR. TULLOCH: About how much fencing would you judge there is in the valley? A. Well, I should think there must be at least six miles in length.

Q. In width? A. Well, that is the length of the fencing.

Q. All, collectively, six miles? A. Yes, sir.

Q. Does that inclose lands or ground that parties might desire to see and might want to visit? A. Nothing more than they might want to go—if there were no fences there they might go there and stake their horses out and get feed.

Q. They would not be spots of interest, would they, or would they not? A. No.

Q. What is the nature of these fences? Are they picket fences? A. Some picket fence and some wire fence.

Q. Is there much wire fence? A. Well, from the old Hutchings place, clear to the lower end of the fence around the north side of the river; and what it is on Barnard's place and up through the Harris way—I think there is a portion rails and a portion pickets, and perhaps some wire fence.

MR. GARDNER: On these wire fences is there a board also? A. No.

Q. Just wire? A. Yes, sir.

Q. Are they common barbed wire? A. Common barbed wire fence. There is a portion fenced from the Guardian's office, down past Cavagnero's store, about—well, perhaps an eighth of a mile—that is, this wire with poles nailed on.

Q. Are those fences close to the roads? A. Yes, sir; a portion are there right by the side of the road.

Q. For how long a distance? A. The road from the old Hutchings barn up through the Harris place, the fence there is right directly upon the road.

Q. What distance is that? A. Well, I should judge it is a mile and a half.

Q. And for that distance the fence runs right along close to the road? A. Yes, sir.

Q. A person couldn't go up on the right side without running against

the fence? A. In going up the valley it will be upon his right side, and coming down it would be upon his left.

Q. "Holding annual meeting with closed doors, in violation of State laws." A. Well, there was some feeling in regard to the meeting there in 1885; about its being held with closed doors. The Senator will recollect that.

THE CHAIRMAN: State to the committee what that was.

MR. TULLY: What was the circumstances attending it? A. In the morning they received petitions and complaints and referred them to committees. In the afternoon they adjourned, and met in one of the back rooms of the office. I don't know whether they gave orders not to admit anybody, but it was the understanding that there was no parties admitted except one or two that they invited in to hear them, Mr. Fitch of the "Bulletin" for one; and some parties outside that desired to hear the business of the meeting, and also to address the Commissioners, were complaining some about not being allowed in. Some of them went in and others did not; and after the business was done they threw the door open, and announced their decisions in cases.

Q. What was the nature of that meeting; for what purpose was it called?

A. It was the general meeting in June.

Q. Just a meeting of the Board? A. A meeting of the Board.

Q. For general purposes? A. Yes, sir.

Q. Do you know of any person applying there for admission at that time that was refused? A. I don't know that they were refused admission, but there was some parties that would like to have had heard the discussion in relation to matters before the Board that didn't feel like crowding in before the Board to hear the discussion, and so they stayed out.

Q. Found the doors closed? A. Yes, sir. The door was closed and locked, upon the front part of the office.

Q. What year was that? A. 1885.

MR. GOUCHER: What Commissioners attended that meeting, do you remember? Mr. Griffith, Mr. Madden, Mr. Chapman, Mr. Mills, and Governor Stoneman. I don't recollect whether Mr. Mentzer was there at that time or not.

Q. Was Mr. O'Brien there? A. Mr. O'Brien, I think, was there.

Q. Mr. Madden? A. I named Mr. Madden.

Q. Chapman? A. Chapman was there, I believe.

Q. Mr. Raymond—do you remember whether he was there? A. I think Mr. Raymond was not there, although I am not certain about that. I believe he was there, too. I think he was there at that meeting.

Q. You say that was the June meeting in 1885? A. The June meeting in 1885.

MR. GOUCHER: Before my distinguished honor as Commissioner commenced? A. Yes, sir. You was the gentleman who was very indignant because you were not allowed in the meeting.

MR. GOUCHER: The fact was, I was an attorney for the Commission at that time, and I resigned because they held a meeting with closed doors. That was a fact. Mr. Sprague knows that.

THE WITNESS: There was another matter that he wanted to address the Commission in relation to, and he had to apply for admission to the meeting of the Commission, of which he was the attorney, to be allowed in.

MR. GOUCHER: I want to say this: that I don't wish anything that I have said to be construed as condemning what they did. I don't know what excuse they will offer for that, or what explanation they will give—the gentlemen who were Commissioners at that time.

MR. TULLOCH: "Violation of State laws regarding the granting of exclusive privileges in the valley."

MR. TULLY: I suppose so far as the violation of State law is concerned, that is a matter of opinion; but as to the fact, what do you know about the fact: whether or not exclusive privileges are or have been granted there? A. I don't know of my own knowledge, anything about it.

Q. Who are the lessees there? A. Coffman & Kenney, J. J. Cook, John K. Barnard, Albert Snow, I believe. I think that is all; Angelo Cavagnero, and John Finch. He leased the blacksmith shop; Mrs. Glynn, James McCauley.

Q. Those gentlemen all are there and have leased, I understand, from the Commissioners? A. From the Commission, as I understand it.

Q. Do these leases, or does the possession that those parties hold there in the grounds that they have leased and with the privileges that they secure, thereby operate in the nature of an exclusive privilege? That is, excluding others from the enjoyment of either similar or other privileges in the valley? A. I don't know whether other parties have applied for similar leases or not. I don't know that they have, and don't know but they have.

Q. You don't know that any other parties have ever applied there? A. I don't know of my own knowledge.

Q. You don't know whether or not if they had applied, they would have been able to obtain leases or not? A. No, sir.

MR. TULLOCH: Did you ever apply for a lease of anything, or any privilege? A. I applied for a lease of the Royal Arch farm, in 1886, offering the sum of \$700. I told Dr. May that that was my purpose in there, and he suggested that I make application for the lease. Before I made application it was talked among the guides and other parties there that they were not going to allow Harris to have it another season, but after the meeting of the Commission, Dr. May told me that the Commissioners had decided not to lease the ranch the next year, but to cultivate it themselves and then lease it with the Stoneman House; lease the ground with the Stoneman House in two years from that time.

Q. You didn't get a lease? A. I did not.

Q. Who ultimately got a lease of the ground? A. Harris got the lease of it for the next year.

Q. What did he pay for it? A. I don't know.

MR. GOUCHER: What year did you say that was? A. 1886.

MR. TULLY: Do you know who it was afterwards let to after Harris' term expired? A. It was let to Coffman & Kenney.

Q. Have they had it ever since? A. They had it last year and have it now.

MR. TULLOCH: Do you know what they pay for it? A. I do not.

Q. Do you know whether it was greater or less than the amount you offered? A. I don't know; I heard that it was less, but I don't know.

MR. TULLY: I understand you to say you did make application? A. I did make application.

Q. You offered \$700? A. Yes, sir.

Q. And didn't get it? A. And didn't get it.

Q. And you know, don't you, how much the present lessees, or those who did get it, gave for it? A. I do not.

MR. TULLOCH: You don't know what Harris paid for it? A. I do not.

Q. Who had it before Harris had it? A. Lemmon had it at first.

Q. Do you know what he paid for it? A. He sold the property to the State, and there was an appropriation made, and then, as I understand it, or my recollection of it is that he rented it from the Commission. But how

much he paid I don't know. He rented it then to Brightman & Kenney; and afterwards Harris had it, after Lemmon's death.

Q. "Reduction of rentals to the prejudice of the State's income?" A. I don't know anything about that.

Q. "Failure to recognize their own contracts?" A. As far as I know they do recognize their own contracts.

MR. TULLY: Of your own knowledge, you don't know of any instance in which they have repudiated their own contracts? A. I do not, of my own knowledge.

MR. TULLOCH: Have you a knowledge of their dealings, and would you know, anyway? A. Well, I have been at several of their meetings, and seen the reports in the papers; that is all I would know.

Q. "Withholding from citizens facts concerning the acceptance of the Stoneman House by the State, and illegally leasing the same?" A. I don't know anything about that.

Q. "Rendering useless the district school of Yosemite Valley?" A. I don't know anything about that.

Q. "Neglect of public roads and trails within the grant?" A. I don't know anything about those.

THE CHAIRMAN: What is the condition of the roads generally from your observation? A. The roads are in pretty good condition, when I have been over them.

Q. Do you think they are well kept, well cared for? A. They appear to be. All I have been over the roads for the last year or two are from the foot of the grade, from the Big Oak Flat road up to the hotel and back; up as far as the Stoneman House.

THE CHAIRMAN: Were you over any of the trails? A. I have not been over any of the trails for the last four or five years.

MR. TULLY: "Employment of State labor upon work for private parties?" A. I don't know anything about that.

Q. "Failure of the Board to properly manage the Yosemite Valley in accordance with the conditions imposed upon the State by the United States?" A. I could criticise in regard to that.

THE CHAIRMAN: Mr. Sprague can state, for the benefit of the committee, what is his opinion in regard to the management of the valley, from his observation. He states that there has been a good many trees cut down and a good many fences built.

Q. What is your opinion, Mr. Sprague? A. I think the valley should be managed in the interest of the State, and not as a source of revenue. I think the State Legislature should apportion money for the benefit of the valley, for the benefit of the grant, and that the valley should be thrown open at a nominal rent to parties who wish to do business there, and the fences should be taken down, and allow people that go in there with their own teams to get as much feed as they can there upon the natural meadows. People that are used to buying hay for \$5 or \$6 a ton, don't like to go in there and pay 3 cents a pound for it. There have been considerable many complaints in relation to the high prices for feed there.

MR. TULLY: That would raise the inference that the management does not permit of all those things? A. Well, it is a question between the Commissioners and people that desire to visit the valley. If the Commission want to make a money-making investment of the Yosemite Valley, the higher rents they can get, and the more they can get for those rents, the bigger income there can be from the valley.

Q. Then looking at it from your standpoint, you don't think the valley has been managed in such a manner as is conclusive to the best interests

of tourists and the State, and the public generally? A. Not in that respect. The season there is very short, and parties paying high rents have to charge high prices, in order to make a success of the business.

Q. From your observation there—as long as we have gotten on to that branch of it—from your observation there, do you or do you not believe that the better policy for the State would be that these Commissioners should change their present style and system of management there, and throw it more open to the public, so that the public would have freer access to all the enjoyments or privileges, and everything else in the valley? A. I do.

Q. You think there is room for improvement on the present management? A. Room for improvement on the present management in that respect.

MR. TULLY: I understand that it will devolve upon this committee, after they shall have gotten through, to suggest anything, and to draw our conclusion as to whether the present management, in our opinion, is conducive to the best interests of the State, and we are required, under our resolution, to make some recommendation.

MR. GARDNER: If they would remove all these fences, how long would the feed last? A. If they would remove those fences, and keep up the saddle train horses, there would be feed for all the campers that would go in there, for the season.

THE CHAIRMAN: Without buying any feed? A. Without buying feed; that is, if parties wanted to stake their horses out upon grass, they could get plenty of feed for them.

MR. TULLY: Then I understand from that, that you consider, in your judgment, that those fences and the inclosure of pasture lands there, are not conducive to the best interests of the valley, and the convenience and the accommodation of those who desire to visit it? A. Those who desire to visit with their own teams would find better accommodations there.

Q. If those fences were removed? A. If those fences were removed.

MR. TULLOCH: You spoke a moment ago of having to pay \$60 a ton for hay? A. They come from the plains, where they can buy hay for \$6 a ton, and they don't like to pay 3 cents a pound in the Yosemite Valley.

Q. What are the nearest ranches to the Yosemite Valley? A. On this side there is one about twenty-five miles from the valley.

Q. What could hay be raised at on those ranches and sold for in the valley, and a profit be made at it? A. Well, hay has been sold in the valley, hauled from two miles the other side of Groveland into the valley, and sold, this season, for \$40 a ton.

Q. Was it a good quality of hay? A. The best quality of hay.

Q. Wheat or barley? A. Wheat and barley, both.

Q. For \$40? A. Yes, sir.

Q. What is the amount asked by Coffman & Kenney? A. \$60.

MR. GARDNER: Do they raise all the hay they want for themselves there? A. They bought some hay of parties before harvesting; I don't know how much; but none since.

Q. Do parties meet with a ready sale, coming in from the outside? A. They do not.

Q. Is there a movement on foot by Coffman & Kenney, or other parties, to prevent parties from the outside from coming in and getting a market for their hay? A. If a person hauls a load of hay in there, he can't sell it, unless he will sell it at whatever price they are willing to give. If he can get orders for it before he takes it in, he makes his own price then. I saw

a bill the other day of fifteen thousand and odd pounds of hay that was sold to the Commissioners for \$40 a ton; it amounted to \$311 08.

Q. For \$40 a ton? A. \$40 a ton.

Q. And that was brought from the outside? A. Yes, sir.

MR. TULLY: Then the difference between what hay could be placed there for and would, if they had free access to it, under fair dealings—the difference between what it could be put there for from the outside for the accommodation of visitors, and what Kenney & Company ask for it, is about 50 per cent—an addition of \$20 on to the \$40, making \$60 a ton? A. Yes, sir; if a person was in there buying hay, they would want some little profit on it for \$40 a ton; but if there was no hay raised in the valley, parties would lease the barn at a nominal rent, and haul hay in there, and put a man there to sell it.

Q. For the convenience of campers? A. Yes, sir. If a man has a market for hay—

MR. GARDNER: Then it would cost them at least \$50? If they had to pay \$40 for it they couldn't sell it for less than \$10 a ton profit and keep a man there, could they, for a short season? A. If they leased the barn there for a nominal rent, they would put a man there and dispose of their hay, and get cash for it. They could pay for keeping a man there at \$45 a ton, I think.

MR. TULLOCH: In relation to the hay which is raised in the valley by Coffman & Kenney, at what price could they sell the hay that they raise themselves and still make a profit? A. Harris used to sell hay from \$35 to \$40 a ton.

Q. And raise it in the valley? A. And raise it in the valley.

Q. Do these parties raise any better hay than Harris? A. A good deal better hay.

Q. The parties in the valley? A. No, the parties outside of the valley.

Q. I have reference to Coffman & Kenney? A. They raise their hay in the valley.

Q. The kind that Harris raised? A. The same that Harris raised.

Q. And the same that he asked \$40 a ton for, they ask \$60 for? A. Yes, sir.

MR. GARDNER: Don't they raise grain hay? A. Yes, sir; but they raise a great many brakes in it—a great many weeds.

Q. Harris raised only grass? A. He raised some timothy hay, and some grain hay. Timothy hay was really the best of the two. There is so many weeds among the grain hay.

MR. TULLOCH: Do you know what it costs a party to go into the valley; how much it costs per day there—his board and lodging, and the value of his horse and things? A. I understand the charges are \$4 a day for a person at the hotels, and \$2 for a horse at the stable.

MR. TULLY: Do you know whether those horses are fed hay and barley, or simply hay, at the stables? A. I suppose they are fed hay and barley.

MR. TULLOCH: Is that an exorbitant price? A. Well, it is a little higher than rates on the outside. I don't know that it is very exorbitant.

Q. Could a man make money by letting them have horses for \$1 25 a day, or \$1 50? A. Well, they would not get very rich at it. If he only had the business of private teams that go in, he couldn't afford to keep them for \$1 50.

Q. What do Coffman & Kenney charge for their horses, for saddle trains? A. \$3, I believe, is the charge.

Q. For a whole day or a part of a day? A. To certain points. The Commissioners fix rates to certain points; for instance, they go to Snow's

or to Nevada Falls, their rate is \$3, with the addition of a guide to the parties. Each one of the parties, or whatever the number is, pays their proportion of \$3 a day to the guide. If there is only one in the party, he has to pay \$6 a day, and he has the guide; if there are five or six in the party, they only pay a proportion of the \$3, in addition to their \$3 for the horse.

Q. If there is one party, his expense would be \$6 a day in that matter—\$3 for the horse and \$3 for the guide? A. Yes, sir.

Q. Whether a whole day or a part of a day? A. In going to Snow's, if they go to Snow's and around by Glacier Point, I understand the charges—well, I don't know whether it is \$6 for the round trip or \$5. I think it is \$5. It is rather a hard trip for a horse.

MR. TULLY: They pay \$3 a day for the guide? A. For the guide.

MR. GARDNER: Are they compelled to take a guide? A. They are not compelled to take a guide, but most of people that are not used to horses, want a man to take care of the saddles.

THE CHAIRMAN: Do you think it would be safe for a stranger to travel over a trail without a guide? A. If a person is used to horseback riding it is perfectly safe; if he is not used to horseback riding it is not safe.

MR. TULLY: There are a great many persons who come in there who don't know much about horseback riding? A. There are many ladies come in there that never were on a horse in their life. Some of them want a guide to lead their horse; of course, if they get a guide for them, they will have to pay him \$3.

[Further hearing continued until to-morrow, February 12, 1889, at seven o'clock and thirty minutes p. m.]

TUESDAY EVENING, February 12, 1889.

MRS. ELIZABETH GLYNN.

Being sworn by the Chairman, testified as follows:

THE CHAIRMAN: State your residence? Answer—Yosemite Valley.

Q. How long have you lived in the Yosemite Valley? A. I have lived there since 1877.

Q. Well, now, will you state to the committee first in regard to your connection with your house up in the Yosemite Valley? A. In 1877 I moved into the valley; moved up to Glacier Point, in Mr. Macauley's house, and kept it for three years, or three seasons. Then I moved down into the valley, and I have been there ever since. The winter of 1880 I wrote to Mr. Hutchings, who was then in San Francisco, in January, and asked him to ask the Commissioners if I could have the privilege to keep a restaurant and bakery, if I wanted to, and he wrote back that the Commissioners said if I could get a house I could have the privilege, but that I could not have the privilege to build. So, after my husband died, of course, I gave up the idea of that; and Mr. Hedges boarded with me, and two men; and he owed me \$126 50. He offered me this place, and I said to him, "Have you asked the Commissioners?" and he says, "Certainly I have asked them, three or four times—the old Board," he says, "and they always told me whenever I got ready to leave, if any one wanted it, I could turn the building over to them." And he asked me at first \$1,500. I says, "No, it ain't

worth that." There is two stables connected with the place, and I bought the place for the stables, because the house, there is nothing to it; it is good for nothing; and I bought it in good faith; and he says—Mr. Hedges then came down to \$1,000, and I was to pay him \$600 down and give my note for the rest, with 10 per cent interest; and I did so; and then after that I paid him \$140 more. Well, the next season after I bought it I had paid my rent, \$50. Then I was waited on by Briggs and Raymond, that is now dead; and I says, "Mr. Raymond, I hear you are going to take the stables." "Well," he says, "I don't see how any one could say that, for we have no idea of doing any such a thing, because it always takes some one that is interested to take care of these things and keep them in repair, "but," he says, "Mrs. Glynn, I don't want you to think that you own one thing in this valley." "Well," says I, "I don't pretend to own anything but the buildings, I suppose I own them." "No," he says, "he sold you State property." That is Hedges; and he says, "He had no right to sell it." Said I, "Why not?" And he says, "Because he had not." "Well," said I, "did the State ever pay for this property?" He says, "No." "Well," I says then, "how is it the State's if they didn't pay for it?" "Well," he says, "I don't want you to think it is yours." So then he says, "How much rent do you think you ought to pay?" I says, "I will leave that to the Commissioners." And so he fixed it at \$50, and I paid \$50 twice. And the next year after that, in June, before they had their public meeting there, Mr. Briggs and Mr. Griffith called. Mr. Griffith says: "We are going to take the stables." "Well," said I, "what am I going to have to help me pay this money, this back note, that Hedges got from me? Will I be obliged to to pay it?" "Why," says he, "I suppose you will, if it is a note of hand." "Well," says I, "what have I got?" (I had already paid him \$780) "and I have not got anything." Well, he didn't know; they were going to take the stables; and he talked awhile, and then they went off; and then I had notices, one after another, from Mr. Dennison, that under no consideration whatever should I have the rent of the stables. So they took them and reduced my rent to \$1. And then Mr. Dennison—and that was not the worst they done. They restricted me to two boarders; and I sent for Mr. Goucher the next meeting, and Mr. Mentzer, one of the Commissioners, and told them that I couldn't live on two boarders. Said I: "I suppose I have a right to make a living here as well as any one else, and I am obliged to stay here on account of my health, because I can't breathe in any other place;" and said he: "Well, they can't let you have only two employés that work in the valley." And at that time I had old Mr. Sinning. I live in his house now; he boarded with me; and another man that was in business for himself. I told Mr. Sinning. "Why," said he, "I don't call myself an employé; I work for myself." Says I: "That is what Mr. Dennison said; it included all." And then I had another notice from Mr. Dennison, because those men didn't go away; and he says: "I hope you won't give any more trouble by keeping more than two employés that work in the valley." "Well," said I, "Mr. Dennison, I didn't know that I was violating any of the Commissioners' orders. I don't wish to do anything to offend them." And so it went from that; and I never got nothing for my place, but still I have it yet; the house.

THE CHAIRMAN: I understand you are still occupying the house in the valley? A. No; I live in Mr. Sinning's house; I can't live in the house in the winter, in cold weather; it has been good for nothing, hardly; it is a very good house for the summer, and the water is very handy there; but I have lived in Mr. Sinning's house. I didn't leave at all last summer, be-

cause I stayed there to take care of his place, because he is sick; been sick two years. I don't pay any rent; I stay there and take care of his house.

Q. That is all you know; that is everything connected with your house?
A. Yes, sir; I have nothing to say about the management of the valley.

MR. TULLOCH: How did you come into possession of the property? A. I bought it of Hedges.

Q. What did the property consist of? A. Well, it consists of a house and stables and fences, and everything that was inclosed in the lot; wood and all that was there.

Q. What was the amount you paid for it? A. I was to pay \$1,000, and I paid \$780, and I have not paid the rest. Then I wrote to him and told him. Mr. Hutchings made out the bill of sale of the place. Hedges made it himself first, and I wouldn't accept it, and then Mr. Hutchings made it out; he is a Notary Public, and I thought that if it was not right Mr. Hutchings ought to have told me.

Q. Do you know how Hedges got the property? A. Old Mr. Hedges bought the lot and paid his money for it. That is more than any other one done in the valley.

Q. Did Mr. Hedges build the houses and stables there? A. Yes, sir; Hedges built the houses and stables. I presume you have seen letters in the "Examiner," and it is stated just as he wrote to me.

Q. Then was it his own property, do you think? A. Well, it was his own money bought it.

Q. His own money bought it? A. The rule in the valley, ever since I know anything about the valley, until lately, was, if a man put up a building, and if any one else wanted to buy it and he wanted to leave, they had permission from the Commissioners to turn over that building to any one that wanted it and pay him what it cost him; of course not the land, but the buildings.

Q. Then the buildings themselves belonged to Mr. Hedges? A. Yes, sir.

Q. By the fact of his having built them? A. Yes, sir. And he said he had been often complimented by the Commissioners by making everything so convenient for himself. They told me that they would not allow me to sub-let. "Well," I says, "why didn't you tell Mr. Hedges that? He has let the stables." They never said nothing to Hedges.

Q. Were you deprived of the use of the stables then? A. Oh, yes.

Q. By whom? A. By the Commissioners. Mr. Griffith and Mr. Briggs were the ones that waited on me. I don't know anything about the rest.

MR. HOOK: What year was that? A. Mr. Goucher has got all my papers.

Q. What year was it; do you know? A. That I bought?

THE CHAIRMAN: Yes; what year was it? A. That I bought the property?

Q. Yes? A. It was four years ago—in 1885, I think. Mr. Goucher has got the papers.

MR. TULLOCH: Who was it restricted you to two employés as boarders? A. Well, Mr. Dennison notified me. I suppose the Commissioners notified him.

Q. He notified you? A. Yes, sir; he notified me. He was Guardian then.

Q. Do you know what the reason was; was there any reason assigned for it? A. I don't know of any. I believe there is but one Commissioner on the Board that was a Commissioner then, and that is Mr. Mills—Mr. Mills, I think. There is not any other Commissioner now that was then, is there, only Mr. Mills, on the Board?

MR. DENNISON: Mr. Madden. A. Was he on the Board?

MR. DENNISON: Yes. A. I had forgotten it. I know he was Commissioner once, but he gave up.

MR. DENNISON: And Mr. Chapman was Commissioner then.

MR. TRUMAN: I would like to state that we permit the lady now to have eight boarders, and only charge her \$1 a year.

MR. TULLOCH: That is your testimony, is it, Mrs. Glynn? A. Yes, sir.

GALEN CLARK.

Being sworn by the Chairman, testified as follows:

MR. TULLOCH: Where do you reside, Mr. Clark? Answer—In the Yosemite Valley.

Q. Do you know anything respecting the general management of affairs in the Yosemite Valley? A. I have lived there for quite a number of years and have had more or less observation of the management. Since I was out of the office as Guardian and Commissioner I have never attended any of the meetings of the Commissioners, and don't know fully what business has been done in their meetings.

Q. How long have you been out of office? A. The new Board of Commissioners came in after the adoption of the new Constitution—they were appointed in 1880—and then there was a contest between the Secretary and the people with regard to whether—he refused to give up his books, and the matter was carried to the Supreme Court of the United States and it was decided in March; so that, from September, 1880, until March, 1881, both Mr. Hutchings and myself acted as Guardian. There were two Guardians there and two sets of Commissioners until that time. Then, since then I have had nothing to do with the management of the valley, as Guardian or Commissioner, since March, 1881.

MR. HOOK: Were any of the present Commissioners then in office? A. In 1881?

Q. Yes? A. Well, it seems to me that there were not, any of them. To my present recollection there was not any of the present Board in office at that time.

MR. TULLOCH: Do you know of your own knowledge anything that has happened since; any movements or management of matters there? Do you know of your own knowledge how affairs have been managed since? A. I know the result of management there to a certain extent.

Q. What are those results? A. Well, I don't know that I can give a direct answer to it. There have been some changes and improvements made there since then. Houses have been built; some fences have been built; some improvements have been made otherwise; some changes have been made; old houses have been torn down; leases have changed hands to some extent.

Q. The first charge is: "Misapplying public moneys and appropriations." A. I don't know of anything of that kind that has been done. Nothing has been done, to my knowledge, to that effect.

Q. Do you know anything about destruction of public and private property in Yosemite Valley? A. I know with regard to their tearing down and removing buildings there; removing what was termed the old Black building; the old Folsom saloon; Leidig's hotel; that was all done this last season.

Q. Was that a destruction of property, according to your ideas? A.

Well, according to my idea, some portion of it was. That is, I think Leidig's building was a good, substantial building, suitable to do business of some kind in for a good many years, providing it was wanted.

Q. Then was it, or was it not, in a good condition when torn down? A. In a very good condition. The timbers were so sound that they were all used in other improvements. But that is a matter of judgment with the Board of Commissioners.

MR. HOOK: Then you think it was a matter of judgment regarding whether it was proper or not to remove them? A. Yes, sir.

MR. TULLOCH: As regards the material of this house; was the material sound or not, when it was pulled down; that is the question? A. It was so sound that it was used in the erection of other buildings.

MR. HOOK: There was none of this lumber that went to waste—it was all used, was it? A. Pretty much all used. Some of it, the lighter portion, like shingles and clapboards on the outside, went to waste. The main framing timbers were all used.

MR. TULLOCH: In what were they used—in the construction of what buildings or improvements were they used? A. A considerable portion of them were used in the enlargement of Barnard's hotel. Some little of them, I believe, were used in improvements at the Royal Arch farm; but most of them in the enlargement of Barnard's hotel.

Q. You say the Leidig hotel, the materials used therein, were used for improvements on the Barnard hotel, and what else—and what other buildings? A. I think some portion of it was used up at the Royal Arch farm, but not very much of it. The most of it was used at the Barnard building. That is, to the best of my knowledge. I had nothing to do with the removal or hauling of it. It was only by casual observation that I saw where it went to. I didn't make a special business of—

Q. This building you call Black's building—what became of that? A. That was torn down, and nearly all the good portion of the framing work was used in the improvements on the Royal Arch farm.

Q. What was the nature of those improvements; were they fences or not? A. No, sir; they were buildings. There was a barn built there and a dwelling house, a guide house, office, and wagon shed; and the framing timbers were used and worked in to the best advantage in all the different buildings.

Q. Who then had a lease of the Royal Arch farm at that time? A. Coffman & Kenney.

Q. And the saloon, do you know where that went to? A. That went up to the Royal Arch farm, the best portion of it, in the improvements there.

Q. Do you know of any further destruction of property, either private or public, of any kind? A. No, sir.

MR. TULLY: Who did that building that was destroyed there—that Leidig hotel—belong to when it was torn down; do you know? A. Leidig claimed it as his private property. It was put up by him under a provisional lease from the Commissioners, in 1869.

Q. Do you know whether or not his title was extinguished by those who tore it down, before they did tear it down? A. His lease had lapsed by expiration of time; and the leases were all drawn in that way; at the expiration of the leases all the property reverted back to the State.

Q. Then it was not private property when it was torn down? A. Not in a legal, strictly legal sense, I think.

Q. Well, do you know who owns the premises, who has control of them, where that lumber was subsequently used? A. Coffman & Kenney have a lease of that farm, of the Royal Arch farm, where considerable of the

lumber that was taken out of these buildings was used; but the principal part of Leidig's building, the main part of it, went into the enlargement of Barnard's hotel. Barnard has a lease of that yet.

Q. Coffman & Kenney, I suppose, simply own or have possession of those houses that they built there of this lumber, by virtue of a lease? A. Yes, sir; the buildings were put up by the Commissioners, and while they occupy the place under a lease, they have the use of them.

Q. These buildings that are built are the property of the State, as I understand it? A. Yes, sir; they are built for the benefit, as I understand, of the carriage and saddle train company. Whoever has that privilege in the valley will occupy that farm, and have the use of those buildings.

MR. HOOK: In moving these buildings, do you think it was better for the State to let them, or could they let them better where they were moved than they could at the place they were moved from? A. A portion of the buildings—the old Black hotel, especially—was unfit for any permanent use. It was built in 1869 or 1870, and built of the cheapest kind—as cheap as it could possibly be made; the most room was made with the least money, and it was a very unsubstantial building, and unfit for public use in the valley, the most of it.

MR. TULLY: What was the condition of this Leidig hotel when it was torn down? A. The Leidig hotel was a pretty good, sound house; was substantially built.

Q. Was that such a house as a person could use for a hotel? A. It might have been used as a hotel, provided it was wanted.

Q. Had it been used as a hotel? A. It had been used as a hotel since the spring of 1870.

Q. Up to the time it was torn down? A. Up to last spring—about the first of May.

MR. HOOK: The Stoneman House was built at that time, wasn't it? A. The Stoneman House was built and opened in 1888.

Q. These were torn down afterwards? A. These were torn down afterwards.

Q. Didn't the building of the Stoneman House curtail the people coming to the different hotels? A. Well, the Stoneman House took so much of the travel that it was unprofitable for anybody to carry on the business in the Leidig house. The Leidig folks left.

Q. Then, do you think if that had been left there, could the Commissioners have rented that as a hotel? A. Some persons might have been willing to lease it; I can't say about that. I never heard of any special applications for it; but still there might have been parties that would have leased it.

Q. You stated a few minutes ago that it was just an opinion of judgment between the Commissioners and yourself about the removal of those buildings? A. Yes, sir; they are supposed to have full management and control of that valley for its preservation, and pass all rules and regulations for its preservation and for the comfort and convenience and pleasure of tourists there.

Q. Do you think they do it with the best idea of the interest of the State at heart? A. I have no reason to believe otherwise, sir.

MR. TULLY: Do you think it was a judicious and wise movement on their part to destroy that hotel, taking into consideration the facilities it might have afforded to campers and people coming in there and wanting out-houses, wanting some place to stop; do you think it was a judicious movement to remove that house, or would the interests of tourists and those visiting there, and the State, have been better subserved by leaving it there,

in your judgment? A. That is a question I could hardly give a positive answer to.

Q. You have not formed any definite opinion on that subject? A. From my experience as having been a Commissioner there for sixteen years, and Guardian also, and having the interests of tourists solely at heart, as all the Board of Commissioners did while I was there, it is my opinion that they can be amply and better accommodated where the hotels are now than they could there. It is possible there might have been a cheap rate house put up there that would have accommodated some, but in my judgment, if I had been a Commissioner, I should have probably supported with the rest of them to have taken the house down.

Q. Do you not think that it would be conducive to the best interests, not only of the State, but to the satisfaction and convenience of tourists, to have some cheap house around there where they could stop and rest, without being compelled to go to such a house as the Stoneman House? A. I think a good first class restaurant there would be conducive to the interests of tourists, where they could go at all hours of the day and get a meal whenever necessary.

Q. Don't you think that some cheap house, some less expensive house than the Stoneman House, would really contribute to the best interests of the traveling public, and accommodate them in many instances where they would not be able to go to the other house—where, if they had a cheaper house, they would be satisfied with the cheaper house? A. I think it would be a very good thing if properly managed.

Q. Don't you think it would be just not to compel all of those people who come there and want to put up at a house, to go to the first class house; don't you think there are many people from the country, and from the world at large, who go there, who want to live cheaply? They have not \$4 or \$5 a day to spend, and they would like to have some little out of the way place where they could go to, and find accommodations at a lesser rate, and live more economically than the absence of that kind of a house would compel them to go to the other house, a more expensive house? A. I think it would be very satisfactory to a certain class of the traveling public to have a house of that kind to go to.

Q. Don't you understand that that valley is understood and considered to be open to all classes? A. Yes, sir.

Q. Not particularly for those who are able to pay \$5 and \$6 a day, but that there are many who go there who would like to see the valley, and that a cheap house is almost an absolute necessity to meet the requirements of that class? A. Yes, sir.

MR. HOOK: What are the charges at the Stoneman House? A. The charges are \$4 a day for first class board and rooms. Anybody can go there and get meals at 50 cents a meal in the second class dining room at the different hotels, all of them.

Q. Can you do any better in Sacramento to-day? A. Well, under the circumstances, I have been obliged to put up at the cheapest house I could find here.

MR. GARDNER: There is an opportunity for persons camping there to purchase provisions—places to purchase provisions? People can go and camp there and there are stores to sell them any provisions they want, are there not? A. Yes, sir.

Q. Would a second class house pay there then? A. Not at any very large rental.

Q. The season is very short, and they would need to make some money in a very short time to make it pay at all? A. Yes, sir.

Q. What did Leidig charge when he kept his second class house? A. He charged at different times different rates for accommodati^on. Prior to four years ago the charges were from \$2 50 to \$3 50 a day at all the different hotels in the valley. Since then they have been from \$3 to \$4 a day, at different times varied. I think they sometimes charge \$3 a day and sometimes \$4, according to circumstances.

MR. TULLY: What did I understand you to say with regard to the prices that were formerly charged; what were the prices? A. From \$2 50 to \$3 50 a day.

Q. What time do you allude to? A. I allude to the establishment of business in the Yosemite Valley until within the last four or five years.

Q. About 1881 or 1882 what were the charges there; do you know? A. They were about from \$3 to \$3 50 a day.

Q. Do you know what Barnard charged there per day in 1883? A. From \$3 to \$3 50; I am not certain which.

Q. Didn't he charge \$4 50? A. I don't know that \$4 50 has ever been charged there at any single hotel to any single tourists.

MR. TULLY: I have a receipt that I paid \$4 50. A. Have you?

Q. Yes. A. At Barnard's?

Q. Yes. A. I had no knowledge of any such charge being made.

MR. HOOK: Were the Commissioners in the habit of stopping at Leidig's, a second class hotel? A. There was no second class hotel there. They were all alike. One was as good as the other.

MR. TULLY: Now, as a matter of fact, do you not consider that it is not only a convenience, but it is an absolute necessity to the full enjoyment of tourists and visitors to that valley, to have some cheaper house than the Stoneman House at which they can go and live without camping out; that is, there are many who would prefer a cheap boarding house to camping out, and that it is an absolute necessity that there should be some provision made there for that class of people, in the interest of the traveling public; not so much the interest of the State, but the interest of the traveling public, for whom that park is set apart? A. I think it would be a great accommodation to a certain class of the traveling public.

Q. Then I understand that this house that was torn down was a house of that character; that was a second class house, where tourists of that kind and visitors could find just the accommodation that I have reference to? A. It was as good a house as ever was in the valley until the Stoneman House was built; gave the best accommodations; that is, people were better satisfied there than at any other house in the valley.

Q. Did many people stop there? A. A great many people stopped there; they were full during the busy part of the season.

Q. When it was removed, they had no alternative but to go to the Stoneman House, or to camp out? A. Or go to Barnard's.

Q. Do they charge the same prices; the Barnard House and the Stoneman House? A. Yes, sir.

Q. That is \$4 a day? A. Yes, sir.

Q. Then the presence of that house would probably make a difference of \$1 or \$1 50 a day to a man who would be satisfied with accommodations of that kind? Supposing there were such a house there as Leidig kept there now, instead of paying \$4 a day, he would find accommodations at \$3 or \$3 50—to put it at \$3, and he would save \$1 a day? A. Yes, sir.

Q. That would be an accommodation to a great many tourists who go there? A. If they could stop there, it would be. Tourists are controlled—sometimes under the control—go in there under circumstances which they cannot always control themselves.

Q. But yet there are many go there who did control themselves, and would like to do it again; is that a fact? A. Yes, sir.

MR. HOOK: How long do tourists, as a general thing, stop in the valley? A. On the average the main portion of them stop only about two days; some stop two or three or four days, and some a week, and some only stop one night; from two to three days is the average.

Q. Do they stop any shorter time now than they did when Leidig's and Black's was in operation? A. I don't think they stop as long as they used to eight or ten years ago, as a general thing; not taking the mass of the traveling public.

Q. Are there less campers coming to the valley now than formerly? A. No; the camping parties are somewhat increasing yearly. There were a great many more there the last two or three years than came there six or seven or eight years ago.

MR. TULLY: Then the practical effect of the destruction of those cheaper class houses is to compel a great many people to either camp out or go and pay the higher prices? A. Yes, sir.

Q. They have no option except to camp out or to pay the higher prices? A. There is no other way of being accommodated there.

MR. GARDNER: Is that big hotel enough to accommodate all the visitors? A. No, sir; not in the rush of business, in the busy part of the season it can't accommodate them all. But that and Barnard's hotel together have been able to accommodate all that have visited there this last summer, and we have had as many this last summer as any season prior to last season.

Q. If there still was another house there to divide the business with these two, could they all make a living? A. Well, that is a question that I can't say, whether they will all make a living or not and pay the rents that they have to pay there.

MR. TULLY: You say that you have been one of the Commissioners there? A. Yes, sir.

Q. Do you understand it to be the duty of those Commissioners to run those hotels with a view to making a profit from them, or simply for the accommodation or upon such a scale as would meet the want of the traveling public, without running the State in debt? Do you think the State should be speculative in its management of those properties? A. I don't think it should.

Q. Then it is not a question as to whether it would pay or not, so long as it don't bring the State in debt. If they are managed upon such a basis that the State is not brought in debt by them, and the public interests are also met, don't you think that would be about the basis upon which it ought to be run? A. I don't think the State should run that business in as close a financial way, in many respects, as they would run a piece of private real estate in order to make money.

Q. The management should not be speculative? A. It should not be speculative at all, in my opinion. The amount of tourists who visit Yosemite Valley—who come to California to visit Yosemite—yearly leave in this State, outside of the valley, and outside of their trip to the valley, they leave on an average not less than \$400 or \$500 in the State, and many of them, including the trip to the valley, the majority of them, leave hardly less than \$1,000 in the State of California. Consequently the State is amply paid for whatever appropriations are made there for improvements: even the tax on the money that is left in the State by tourists will equal all the appropriations that have been made there.

Q. That is simply in confirmation of the proposition that the manage-

ment there should not run it with a view to speculation? A. No, sir; that has always been my view. It should not be managed for the purpose of making money, because it is a section of California that California should be proud of. No State in the United States has got such scenery. There is no place in the United States that draws so many tourists; there is no State which commands that admiration throughout the world by tourists who visit there as that Yosemite Valley and its grand surroundings; and the State should take so much pride in its management as to be willing to appropriate liberally towards all the improvements necessary there, and charge but very little rental for any kind of business there.

Q. Then do you not think that it is the duty of that Commission to provide a cheaper set of houses or class of houses there to accommodate tourists who come here with limited means? Don't you think it would be the better policy for the State to erect not very expensive buildings, but such as would meet the requirements of a class of persons who have no great amount of money to spend there, and yet want to see Yosemite and will go and see it, and many more would go and see it if it were not for the fact of these exorbitant prices, or, at least, these high prices—I won't say exorbitant—deter them from going, and that a cheaper class of houses would offer more inducements and that more people would go there? A. My opinion is that the Commission—all the Commissions that have ever exercised any management of that valley—would cheerfully and gladly make it as cheap as possible; make the rates as low as possible, providing the State would come up and pay liberally in affording the means to make the improvements and keep them in repair.

MR. HOOK: Do you consider the State has made the appropriation so as to not handicap the Commission? A. They have been made in that way recently. In early times they were not made that way.

Q. Then you say that the appropriations that are made by the State rather handicap the Commission? A. No, sir.

Q. The question is this: Is there sufficient appropriation to the Commission to carry out these improvements for the benefit of the public? A. No, sir; not in my opinion.

Q. Then they have to practice rigid economy, which, if they were more liberally provided for, they would not have to practice? A. Yes, sir.

MR. TULLY: Do you consider the destruction of the houses there, do you think that their removal and putting them into barns—was the State benefited by it, do you consider; putting them into barns for Kenney & Company. Wouldn't the interests of the State have been better subserved by preserving one or two of those cheap houses, in the interest of tourists? A. That is a matter of judgment.

Q. I ask it as your judgment as a gentleman who has been a Commissioner? A. As I am not a Commissioner now, I am not fully empowered to express the views of the Commission.

Q. I simply ask your opinion on that point, as you have been a Commissioner. I want your unbiased judgment about it. A. As an ex-Commissioner, my judgment would be that it would have been better to have kept the Leidig hotel for a cheaper house, provided the Commissioners could have obtained sufficient means to have gone on with other improvements without charging high rents for the other hotels.

MR. HOOK: Could the Commission have let the Stoneman House at the rate they are letting it at present if they had let two other hotels at a cheaper rate there? A. I don't think parties would have taken the house at the rates they are paying now.

Q. What difference does it make to tourists—you say they stop there

two or three days, and some a week—what difference does it make in the actual cost for a tourist who only stops there for a few days, between the present prices and the past prices; does it make much difference? A. Not very much.

Q. He wouldn't save very much money, would he? A. No, sir.

MR. TULLY: Are there any places in the valley where a camper can get to live in? A. No buildings for that purpose. They sometimes, in case of a storm, get in under shelter, under some shed, or some rooms, occasionally.

Q. Wouldn't it be best for the Commission to build little houses of that kind, the same as are built at these springs, to accommodate campers? A. It would be a great accommodation to have them, in stormy weather, in some localities, but it would need somebody to look after that constantly, because persons coming and going all the time, they would leave the houses and grounds all littered with dirt and empty cans, and mark up the houses with chalk and disfigure places. It would need somebody all the time to look after a camping ground under those conditions.

Q. Then you think the reason that they have not built these places is simply because the appropriations have not been sufficient to maintain them? A. They have had use for the money that they got in building roads; improving the roads and trails to the different points of interest. I think, if they had ample appropriations, that all these conveniences would be provided for camping parties, and cheaper places provided for tourists that come in who are unable to pay the large prices.

Q. A short time ago there was a question asked you: do you think that the Commission has misappropriated any public money? With the limited amount that they have had appropriated, do you think there is any way of their getting away with any money? A. I don't think so; I don't think there is any way. I don't believe there has ever been any misappropriation of money there. I am certain, to the best of my knowledge, there was not any while I had anything to do with it, and I have no reason to believe there has been any change since.

MR. TULLOCH: Do you think an insufficient appropriation for the Commissioners ought to entitle them to charge \$4 a day at that hotel?

MR. TULLY: Do you think the insufficiency of the appropriations by the State to conduct and manage that affair, justifies the charging of \$4 a day in those hotels for board? A. If those hotels did not pay more than half the rent they do, they could then charge less rates to tourists, but they charge all that the business will bear or sustain under the circumstances of not getting sufficient appropriations. They have to make the valley pay as much as possible, because of the need of those financial means to go on with improvements or keeping the roads and buildings in repair that are already there. More appropriations and less rentals all along, would give such results and better satisfaction to the public.

MR. TULLOCH: Do you think that an absolute necessity existed for the building of these roads and trails of which you have just spoken? A. It is an absolute necessity for the interests of tourists that they can get to all the different points of interest. They come there from long distances to see the valley, and spend a large sum of money to come there, and when they are there they feel anxious to go to all the most important and interesting points, and they cannot go to them without these improvements, these trails and roads.

Q. How long ago were those roads built? A. Some of these trails to the higher roads have been built well—some time in the sixties, some of the first of them. The Snow trail was commenced in 1869; built in 1869

and 1870, or somewhere about that time. Previous to that persons had to climb around, like climbing mountains, through the brush, and on foot, and among the rocks, and all those early trails were built by private enterprise.

Q. You spoke of some roads having been built; when were they constructed? A. The first public expenditure of money for roads was commenced in 1881.

Q. How did people get around without roads before that? A. They rode on horseback around the valley.

Q. They had no roads; they merely had trails? A. They had no regular roads; only horseback trails.

Q. Those trails were sufficient to go around on horseback, were they? A. Yes, sir; they could get around very comfortably on horseback, but not up the different heights.

Q. With the exception of a few trails there was no necessity absolutely for these roads? A. Well, it is a necessity, from the fact that there is a large portion of the tourists come there that don't like to ride horseback, cannot ride horseback, and it is necessary to have roads built for carriages to run around for the convenience of tourists there.

MR. HOOK: Will you state where some of those roads are built from the valley proper; up into what places? A. The wagon roads run around the valley, around the level of the valley to Mirror Lake, and all around the valley, and down to what we call the Cascades, eight miles, or at least three or four miles below the regular level of the valley; but the trails are built up to Glacier Point, up to the Vernal and Nevada Falls—

Q. I understood you to say there was a wagon road built; these wagon roads you say were built in 1881? A. They were commenced in 1881; they have been building them ever since 1881.

Q. Were there not roads through the valley in different parts of it in 1875? A. There were trails there as early as 1875—yes, sir; there were roads into the valley in 1875. The stage roads were built in.

Q. Were there not roads also up in through the valley? A. Then they could drive up through the valley; yes, sir. But the stage companies, in building their roads into the valley, they built their roads down into the valley and up on to the level of the valley, where they could get around. The roads had already been sufficiently improved so that they could get around, but they were not improved by State money. They were improved by private individuals.

Q. There were good roads there in 1875, were there not? A. There were fair roads to get around. The Washburn Company in building their road into the valley—their contract was to build the road to the first hotel in the valley; that is, three or four miles from where it entered the lower end of the valley—and the other parties, their contract was to build their road up on the level of the valley so they could get around.

Q. There was a good road from the time you went into the valley, there was a good road coming into the valley, and then from there up to the hotels, up to Hutchings, and also up to Mirror Lake, was there not, in 1875? A. Yes, sir; there were toll trails running up in 1875, up to Glacier Point, and up to Vernal and Nevada Falls, and up to Mirror Lake.

Q. At that time the trails were all owned, and tolls collected in the valley? A. Yes, sir.

Q. The tolls have all been abolished since that time? A. All been abolished.

Q. There is no toll collected at all in the valley? A. No.

Q. The Commissioners do not allow any tolls to be collected? A. No;

they own all the trails and roads. They have bought those trails and roads by the appropriations made in the few past years.

Q. Hasn't the buying of those trails and roads drained them of a good deal of the money appropriated by the State? A. It has taken a good deal of it.

Q. Does that leave the Commission in a cramped condition? A. They are in a cramped condition; that is, with what appropriations are made, they are in a cramped condition, and they are, you might say, in a cramped condition for the want of money to make more improvements.

Q. Then you think, from the benefit the State derives from people coming here simply to see the Yosemite Valley, and leaving, as you say, from \$400 to \$500, or a \$1,000—don't you think it would be better for the State to take a more liberal policy with the Commission? A. I do; I have always thought so. If you will allow me to make one particular statement with regard to the first management of the valley, it might throw some light upon some trouble which originated in regard to those claims.

THE CHAIRMAN: All right; make your statement so the reporter can take it down.

MR. TULLY: We are not here for the purpose of accusing anybody particularly. We have certain charges that we want to examine. Our mission is not specially to convict anybody, but to ascertain whether the charges are true and get at the truth. A. I understand you are trying to get at the bottom of many complaints that have been made.

MR. TULLY: Yes, sir; that is simply the object. We are not here to convict anybody. A. When this valley was ceded by Act of Congress, which passed in June, 1864, there were some settlers, three or four claimants there, that had gone in there and made improvements. At that time, all the improvements that were made there and all the claims there could have been settled by the State of California for not exceeding \$5,000; and the next session, early in the session, there was \$2,000 appropriated to pay the expenses for two years, and the expenses of the Guardian for two years, \$2,000.

Q. What year was that? A. That was the first session after 1864.

Q. What year was that? A. 1864 and 1865. There were \$2,000 appropriated. Well, these settlers that were in there refused to take leases at nominal rents, which the Commissioners offered them for ten years, which was the longest time that the Commission could grant any leases. They refused to take it, claimed that they had settlers' rights there, and chose, rather, to go into the Courts. Suit in ejectment was brought against them, and then the next session after that—for four years after the first two years, after the first \$2,000 was appropriated—for four years there was not a dollar appropriated by the State of California to pay the expenses of the Commissioners, to carry on this lawsuit, or to bring suits against any depredators whatever, and they were handicapped in that way, that they had no money to transact business with whatever, and consequently they allowed parties to go in and make improvements, such as became necessary, and that more improvements should be made to accommodate travel, and they allowed parties to come in there and make these improvements under certain conditions and contracts. Some of them already had regular contracts and some had not, and they gave them leases for ten years. Well, those parties who had made improvements and considered that they would take the chances of getting their pay back with a lease of ten years, supposed that they would probably get a lease of ten years more, but all the smaller business was cut short. And another fact in the matter was, when this was contending—this suit was contending against

those parties—they brought a bill in the Legislature, had bills in the Legislature, to get a title to their improvements there; and the Legislature passed the bills, both in the Senate and the Assembly, granting these settlers there one hundred and sixty acres, after the State had accepted it, the State of California, on condition that it should be forever inalienable. They passed a bill, provided Congress would sanction their action. But that bill failed to become a law, although it was passed by both branches of the Legislature. The State, taking side against the Board of Commissioners, failed to support them in the management of the valley, the improvements of the valley, and in carrying on the lawsuits. It encouraged what might be called the rebel party. They went on and were a great cause of trouble to the Yosemite Commissioners, and it prevented the settlement of that claim for quite a good many years; and these men that were in law, and in rebellion against the Board of Commissioners, went on and made such improvements as were necessary, as they considered, for the accommodation of the people; and what property could have been bought for \$5,000 in 1864 in 1874 those men received \$55,000 for by an appropriation from the State.

MR. HOOK: Who were those men, Mr. Clark? A. Those men were J. M. Hutchings, J. G. Leinmon, A. G. Black, and Ira B. Folsom. These very men who had been fighting against the Board of Commissioners, and had caused them all this trouble, got amply paid for all the improvements they made, while these other men, who had leased of the Commissioners, at the end of ten years were refused leases again, only from year to year, which cramped them very much in their way of doing business. They couldn't make the same preparations for accommodating guests in any manner whatever, under leases from year to year, as they could have done under leases of five or ten years; and consequently there has been several bills introduced, or several times bills have been introduced in the Legislature for pay for these improvements put up under those disadvantageous circumstances. If they could have had leases for five years or ten years granted them, they would have been willing to have gone on and carried on business without asking pay for their property; but these other men having been paid under the conditions which they were, after having been fighting the Commissioners for ten years, these other parties who had put up the improvements and complied with all the rules and regulations of the Commissioners, felt that they were justly entitled to their improvements, as these other parties were who had been fighting the Commissioners and causing so much trouble; and some of these are still thinking. Leidig was one of those who thought he ought to have pay. There are several others. Mr. Snow, in there, thinks he ought to have pay for his buildings, and Cavagnero, and Mrs. Glynn, and Mr. Sinning. I have a small little building myself that I put up at my own expense, and all the improvements about it. And that has been the cause of why these claims have been presented to the Legislature.

Q. So the men that still held on to that property, and were paid for it, and still held on to it after they were paid for it—were they ejected by the Sheriff? Were they driven out by the Sheriff? A. Hutchings was ejected by the Sheriff.

Q. What year was that? A. 1875.

Q. Does he still hold a grudge against the Commission, and caused them trouble in the valley? A. Yes, sir.

Q. Is that trouble caused by a grievance? A. The trouble originated between him and his friends, those others associated with him—it created a faction, a factional influence against the Board of Commissioners, and

against their management, and was an eternal source of trouble to the old Board of Commissioners as long as they stayed, because the State itself had failed to back the Commissioners in maintaining order, and peace, and quietness there in the valley.

MR. TULLY: Well, Mr. Clark, now that with regard to the extinguishment of those claims there is a matter of history here. But is it not a fact that the claims of Hutchings and Lemmon that you speak about—their original claims—they were original pioneers there; in other words, they were squatters. They went in there as settlers before the State acquired a right to the valley; when they were bought out, it was to extinguish the equities that they had acquired there before the Act of Congress denoting that valley to the State? A. Well, it paid them for all their improvements.

Q. But, as a matter of fact, that was—— A. As a matter of fact that was it.

Q. To extinguish their equities that they claimed by virtue of having been prior residents and occupying the land under the preëmption laws of the State before the State acquired any right or title to the property, and the difficulty arose in extinguishing their titles, their equitable title, that they claimed by virtue of their prior possession? A. Yes, sir; their title never had been liquidated until money was appropriated in 1874, and they got pay for all their improvements up to that time.

MR. HOOK: You think they were sufficiently paid for what claim they had there? A. I do.

Q. They still persisted in annoying the Commissioners afterwards, and still do it at present? A. Mr. Hutchings thought he was not amply paid. There were three men appointed as a Commission by the Governor to go and assess their damages; to go in and examine all their premises, and assess what their valuation was, and to pay them for it. They were, I believe, good and honorable and just men; and Mr. Hutchings was not satisfied with the \$24,000 that was awarded to him; and after he had received his pay and signed a relinquishment of all claim there, then he placed his mother-in-law in charge of the hotel, and he acted as agent, and attempted to hold on to the premises. When the place was advertised for lease by the Board of Commissioners, after Hutchings had received his pay, he puts in a counter advertisement in the paper, warning all persons from buying or leasing that property which he had, as he intended to hold on, hold possession, and get a lease from the Legislature and do business there himself.

Q. Wasn't it a general feeling in the valley that when he was taken out by the Sheriff in 1875, that there was a great grievance gone from the valley? A. That was the cry from all that side of that factional portion of the residents and citizens.

Q. Wasn't it of a great portion of the valley at the time? A. That it was a great grievance to turn him out?

Q. No; that it was just, as an act of justice, to take him out of the valley, after he was causing so much trouble? A. As he would not bid for the property—he would not put in a bid; when the advertisement was put in the paper he put in a counter notice forbidding or cautioning all persons from bidding—the majority of people thought it was an act of justice.

Q. In fact, didn't he create a great deal of disturbance or annoyance by still remaining, and holding on to it after he had received this money? A. Yes, sir. Mr. Black also attempted to hold on to his property after he received his money; and Folsom also offered to hold on to his after he received his money; yet neither of them would offer any bid for the rental of the property.

MR. TULLOCH: Can you name any one who considered it an act of justice for him to have left the valley; for his leaving the valley?

MR. TULLY: His ejection; putting him out; whether it was just to evict him? A. I don't know as I could name any one in particular.

MR. TULLOCH: You don't think you could call the name of any one at all? A. I can name all the Board of Commissioners. I know they thought it was an act of justice or they would not have done it.

Q. Do you think you can name any one outside of those Commissioners? A. I would not call any one's name in particular.

Q. Then you don't really have any recollection, positive recollection, of any person outside of the Commissioners, who deemed it an act of justice, do you? A. This faction had become so strong that the majority that lived in the valley at that time sided with those persons who had grievances.

Q. But have you any recollection of any one party?

MR. GARDNER: Were you a Commissioner then? A. Yes, sir.

MR. TULLOCH: Can you name one single party, any one person, who considered it an act of justice—his eviction from the valley? A. I cannot name any one, or would not attempt to name any one. But it was considered by those who had the management that every one that was in a state of rebellion against the Commission, and would not come under their rules and regulations, or submit to any of their rules and regulations whatever, that the best way to get rid of them was to evict them from the valley.

Q. But by parties who were not concerned in the management of the valley, was it considered an act of justice to evict that party? A. By a great many persons it was thought not to be an act of justice.

MR. HOOK: Didn't they hold a celebration in honor of the event of Hutchings being evicted from the valley? A. No celebration whatever. Some people, guides of persons living there, fired off some giant powder cartridges.

Q. Didn't they fire anvils, guns, and pistols? A. No; they fired a few giant powder cartridges.

MR. GARDNER: There were some persons who thought it was just? A. Yes, sir; but I wouldn't like to call any particular names. I know Hutchings made complaint that they did fire off giant powder cartridges, and other powder preparations.

MR. TULLY: The next question is: "The unnecessary destruction of timber in the Yosemite Valley." A. Yes, sir; that means the trees, I suppose, on the level of the valley. Well, in answer to that question, there has been some few trees cut there within the last four or five years; according to my own judgment, and the judgment of many others living in the valley, that it would have been better not to have cut them; but the majority of the timber that has been cut there has been judiciously done, I think; and the large and the young pine trees growing up there—there are hundreds of acres that were called meadow land thirty years ago, that are now covered with young pines, from twenty to twenty-five feet high; and some of those have been cleaned out entirely; some of them have been trimmed out and thinned, but my judgment is, it would have been better to have cut out a great many more of them where they have even trimmed out; it is better to cut more; and there are hundreds of acres there that it is necessary to keep, and preserve the valley in its best condition; for parties to see the views around, it is necessary to cut out and clean it out a good deal more.

Q. Doesn't that apply principally to the undergrowth? A. Yes, sir; to the undergrowth.

Q. And not to the larger timber? A. And not to the larger timber, except in certain localities where they might want to open views, or around

the Stoneman House, where there were large trees liable to be blown down in some cyclone or hurricane, or heavy wind, which we have every year or two, coming through the valley there; it is necessary for the preservation of that property that cost so much, that those trees should be cut down and removed.

Mr. Hook: Has it or has it not been the policy of the Commission to take out dead trees instead of those slightly and beautiful trees in the valley? A. Yes, sir; it is the policy. All the firewood has been cut from dead trees or trees nearly dead ever since the Commissioners took hold of the valley.

Q. Have they taken out any trees that made the valley unsightly or not as beautiful as it was before they were taken out? A. There have been some trees cut that might, perhaps, better have been left, but the majority of the trees, the very larger portion of them, were trees that were necessary to be cut out of the way.

Q. Was it necessary to cut those trees around the Stoneman House? A. Yes, sir, those about the Stoneman House; I think it was very advisable that they should be cut close about it.

Q. Did it add to the view of the Bridal Veil Fall by cutting those trees about the Bridal Veil Fall? A. Yes, sir.

Q. It made the view more perfect? A. So that parties riding along the road could see the Falls to better advantage.

Q. In 1875 wasn't there a regular jungle, so that the beauties of Bridal Veil Fall were entirely lost to the tourists, with the growth of timber, and brush, and one thing and another? A. Yes, sir.

Q. That has been removed, has it? A. There has been a new road built up nearer to the Falls. In three or four places trees have been cut out between the road and the Falls, so that parties driving in carriages can sit in their carriages and see the Falls—the rainbow illumination in the afternoon—to great advantage, where, prior to that road being built they couldn't do it except by riding up among the brush on horseback.

Q. As early as 1875, we had to walk out? A. There is a very good carriage road, so that you can get a fine view.

Q. The spray swings with the wind, one way and another? A. Yes, sir.

Q. They have removed the timber so a person can get out of the way of that spray? A. There is but very little spray that comes down to the road, sometimes.

Q. But I mean up on the granite rocks, where the spray swings backward and forwards fifty or a hundred feet? A. There is no improvement that can be made so that you can get out of the way of that spray.

MR. TULLY: Those trees which you spoke about having been cut out to improve the view. You mean the view from the hotel, do you? A. There are some trees cut out to open a view from Barnard's hotel to the lower Yosemite Falls, so they could stand upon the back porch or at some of the back windows and look through that avenue and get a view of the Falls.

Q. Do you think that was an improvement that enhanced the beauties of the valley? A. It was an improvement in the view from that hotel, and that was all. It was not an improvement to the valley particularly, only just a view from that hotel.

Q. Views might have been had, or might they not, of those Falls from other places? A. Yes, sir.

Q. Equally as fine views? A. Roads and trails running right around to the foot of them, but that was done to accommodate parties at the hotel.

MR. TULLOCH: Do you regard the cutting of these trees rather as an improvement of the hotel than as an improvement of the valley? A. Yes,

sir; I consider it was done for the benefit of the views of the hotel and not for the improvement of the valley.

MR. TULLY: "Clearing and plowing valley meadow land." What do you know about that? A. Some meadows have been plowed up.

Q. By whom and for what purpose? A. There is what is known as the Royal Arch farm. Some portion of that has been under cultivation since Lemmon's existence there; and other meadows have been fed down so successively, year after year, for the last thirty years, that all the natural grasses, and flowers, and vegetation has been cleared out, and it has become a matter of necessity to plow them up and sow them, and eventually seed them down in other kinds of grass; what is called tame grass, cultivated grass.

Q. Who does that plowing, and for whose benefit? A. Some portion of it has been done for the benefit of the State; done under the direction of the Commissioners, by the Guardian; some portion of it has been done by Coffman & Kenney; it is considered one of the ways of reclaiming the valley from its present condition.

Q. From the encroachment of the undergrowth? A. From the encroachment of the undergrowth, and seeding it down in grass, so that it reclaims it to a certain extent; plowing up the young pines, the rose bushes, and briars, and ferns, and acrid kind of vegetation that grows in there that stock won't eat. It is the only resource to reclaim the valley, is to plow and re-sow those meadows; as a matter of reclaiming them.

Q. What are those meadows sown to; what grains, if you know? What grains are sowed upon those lands that are plowed up? A. Wheat or barley. On the Royal Arch farm there is perhaps twenty-five acres of timothy, about that. I don't know for certain the exact amount, but somewhere about that.

Q. What did they do with that? A. Coffman & Kenney have the lease of the ranch, and they feed it, for feeding their saddle trains, or for selling to campers; to supply them with hay.

Q. As a matter of fact it is plowed up there, and the lessees there cultivate it for their own benefit under their lease, and use the ground for the purpose of raising hay to sell to tourists, and for their own teams? A. The same as Harris did. He had it for ten years; he used it for the same purpose.

Q. They use it for the purpose of obtaining hay and feed for their stock, and to sell it to tourists and persons who need it outside of what they need themselves? A. Yes, sir.

Q. The State derives no benefit except from the lease? A. That is all. They pay an annual rental for it.

Q. About how many acres is there that is plowed up and sown to grain and grasses in that valley, Mr. Clark? A. At the Royal Arch farm there, in plowed up land, sowed in wheat or barley and timothy, there is about ninety acres. Over at the Stoneman House, in the field which is rented with the Stoneman House, which was cleared off and plowed up by the Guardian under the direction of the Commissioners two years ago, which now goes with the Stoneman House, there is about, I should judge, twenty-five acres plowed, but I don't know certain, I never have measured it, I judge by the general appearance. In a portion of what was Leidig's lease, on the north side of the river, the pasture, they have plowed in that meadow somewhere about twenty acres—Coffman & Kenney have.

Q. Is that all? A. That constitutes all except the garden or orchard lots. In the Lemmon orchard there is about ten acres; Barnard's garden is, perhaps, about eight acres; seven or eight acres.

Q. That would make about one hundred and fifty acres? A. And Cook's garden also; that is leased with the Stoneman House.

Q. How large is that? A. In the orchard there is probably about five or six acres.

Q. About one hundred and fifty acres in all, according to the estimate? A. About that. I don't know the exact amount of all of it as well as I do the Royal Arch farm, because I surveyed that.

Q. Is that land inclosed with a fence? A. Yes, sir.

Q. What is the character of the fences? A. The fences on the back side, as it is now, are board; either board, or post, and rail. On the side where the regular drive is it is barbed wire fence; posts and barbed wire from post to post between wires.

Q. Now, the next question is: "Debarring the general public from the joint and legal use of the valley." I understand that that question is directed to ascertain whether or not there are any obstacles in the shape of fences or any other obstruction there that impede the free ingress and egress of tourists to the valley or to any portion of the valley that they might desire to visit? A. Well, the fences are a great inconvenience to parties getting around who wish to stroll at leisure along the river or out through the valley. There is a regular drive all around, that they can go on horseback or in carriages; and through some of these inclosures they have what they term turnstiles, that they can pass through on foot and get inside of the inclosure, but they are only on regular walks, for a certain course, defined course. But if they wish to go strolling around in various other places around, they will run against a barbed wire fence occasionally.

Q. As a matter of fact, to a very great extent, except by means of these turnstiles, access to a great deal of that valley there is impeded by those fences? A. Yes, sir.

Q. For the tourist or the visitor who would like to turn out of the roads and go out in the little corners and byways, these fences are a natural barrier to his ingress and egress? A. In many cases they are.

Q. There are no other provisions made for getting through, except those turnstiles, unless a tourist would crawl over or under or through the fences? A. No, sir.

Q. Is that pretty generally the case throughout the floor of the valley there? A. Well, to a great extent.

Q. Those fences, then, operate as a barrier to the free locomotion of visitors and tourists there almost throughout the entire floor of the valley, if the fences are considered as such? A. Within the boundaries, towards the river, towards the regular carriage drives, there is a great deal of the valley fenced. From the carriage drive around on the outside, towards the walls, it is all open. The meadow land lies adjacent to the stream. These fences are made to inclose the meadow land for various purposes.

Q. This says: "The joint and legal use of the valley." As I understand, the legal use of the valley would seem to be the rights that individuals have from all parts of the world to have access to it, that the law contemplates that they shall have that, and anything that impedes that would be a barrier to their legal rights and legal use of the valley. You consider that those fences and obstacles are barriers to the free and we may say legal use of the valley by those who visit it? A. Certain portions of the valley.

Q. What portions—a large proportion of the floor of the valley or a small proportion? A. Well, you might say half of the floor of the valley.

Q. One half of the floor of the valley is in such a condition that it oper-

ates as a barrier? A. That is, bordering on the river, along where the meadow ground is; perhaps not half of the whole area of the valley, because there is a great deal of pine timber land there that does not produce any grass whatever, which is not fenced.

Q. "Holding annual meetings with closed doors, in violation of State law?" A. I know nothing about that.

Q. That has reference to the Commissioners? A. That has reference to the Commissioners, and the old Board never held closed meetings. I know nothing about the present Board, how they hold them. I never have attended one of their meetings.

Q. You know nothing about that as a matter of fact? A. As a matter of fact I know nothing.

Q. "Violation of State laws regarding the granting of exclusive privileges in the valley?" A. I don't know of any what might be termed exclusive privileges granted in the valley.

Q. What would you term an exclusive privilege? A. Giving one company or one individual an exclusive right to transact any considerable amount of business without competition. There is some business there that is of so small a nature that might be called a single privilege, or something of that kind; that other parties would not care to compete at all with it. There would not be sufficient business perhaps to justify it; something like a blacksmith shop, or something of that kind. They did attempt to get two blacksmith shops in there, and did get them, but one of them froze out and left. There was not business enough for two; and so it is with some small business carried on; but there are no exclusive privileges, to my knowledge, granted to anybody.

Q. Is it or is it not true that privileges are granted there; that at stated periods the privilege of doing certain kinds of business there is put up at auction, or, in other words, it is opened to bids, and that the person to whom the privilege is awarded, when he gets into possession of that business, that it operates as an exclusion to anybody else acquiring the same right? A. To a certain extent it operates that way.

Q. Would that not be termed an exclusive privilege; a privilege that excludes somebody else from the enjoyment of the same privilege? Is that what you would call a single privilege instead of an exclusive privilege? A. Perhaps it might be termed an exclusive privilege if a person carried on all of one kind of business without any competition whatever; that is, a large business, as sometimes it is claimed that the saddle train company have an exclusive privilege. Well, I will give one reason why it might be considered advantageous in many respects that one person should carry on that business instead of three or four. The travel commences early in the spring, and those persons doing that business, that have the permission of the Board of Commissioners, have to be there in time to commence with the business in the spring, and they have to keep up the business as long as travel lasts in the fall. During the rush of business in the busiest part of the season, June and the latter part of May, first of June and first of July, if it was open to competition by anybody that wished to come in there with saddle horses, they would run in there for a short time, a month or six weeks, and do business and then they would run out again. They would pay the Commissioners but little rent, and they would ruin the business of those who were paying rent, and it would be impossible to get that valley supplied with ample accommodation throughout the whole season without some arrangement by which those parties could be protected who pay the highest rent and do the business to their satisfaction.

Q. That is to say, I understand the view the Commissioners take of it

is, that it is necessary to grant those exclusive privileges—because we will call them such—to confine those to certain persons, in order to keep out that competition which would interfere with their making a profit on their investment? A. Yes, sir; or making either a living on their investment.

Q. Now, as a matter of fact, if that valley was open during the busy season, if it was known that any persons who had five or ten, or any number of horses or pack trains, might go in there, and take in with him hay and grain, and such equipments as would be necessary to enable them to do business during that term, that is if it was open to competition, and if men knew they would have those facilities afforded them that are afforded to those men who lease that property, that they would come in there, and instead of there being a lack of facilities for accommodating the tourists, that there would perhaps be a superabundance of them? A. Yes, sir.

Q. And by reason of that excessive competition they would destroy the profits that these men who lease would naturally expect to derive from their investment? A. Yes, sir; they would derive all the profits, and those persons who had to stay there during the season would not be paying expenses for about one half of the season.

Q. That is not the question. That is a matter, when people want to speculate, they do that at their own risk. But as a matter of course, the object or the view that the Commissioners take of it is to protect them by granting them this exclusive privilege, in order that they shall not be interfered with by outsiders? A. Yes, sir.

Q. Protect them in their monopoly of the business, because it virtually amounts to a monopoly of the business? To protect them from loss by reason of outside competition? That is virtually the operation; and as I understand it, that is the view the Commissioners take of it? A. Yes, sir; they take that view of it. They consider that the general public is better accommodated in that way than they would be to have a large amount of competition in the summer, and then have the horses all run out as soon as it didn't pay to do business there, and leave the traveling public without any conveniences to get around.

Q. Then they consider themselves not only the guardians of the valley, but they are the guardians of those poor deluded beings who would like to go in there and attempt to compete with those exclusive privileges? A. That is why the Commissioners were appointed—the accommodation of the traveling public; and that is the main portion of the business of the Commissioners; in fact, you may say all the business is to protect people in that way, which will conduce to the greatest pleasure and interests of tourists visiting there in all the different departments. It is a large place, and there are a great many departments of business to manage, which does not occur in common ordinary public parks.

MR. TULLOCH: Do you think it is conducive to the welfare of the general public to go in there and get a horse and guide for \$6 a day, when a man hasn't got but \$3 with which to pay it? A. That is a hardship upon that man.

Q. Do you think it conducive to his welfare then? A. If he was to make his condition known, that he had not that money, and wanted to go to certain places, I think he would be accommodated.

Q. Do you think it conducive to his welfare and a great many more like him?

MR. TULLY: His enjoyment of the valley? A. There are certain trips there for which the prices are \$6 a day, but they are extra trips; not the ordinary day trips.

MR. TULLOCH: Do you think it would be consistent with his opportunities

of enjoyment to pay that amount of money in preference to paying a small amount, if he had the opportunity so to do? A. I think it would pay him much better to pay the small amount.

MR. TULLY: Do you think the tourist, if he goes there with a view to seeing the valley, and enjoying its beauties, do you think it is a matter of very serious consideration with him whether or not the gentleman who furnishes him with those horses makes any money on it or not, so long as he gets it as cheap as he can? A. I don't think he understands the nature of the business.

Q. He would like to get it just as cheap as possible, like all other sensible men? A. Yes, sir.

Q. Regardless of whether the parties of whom he hired those animals made any money on them or not, so long as he was accommodated? A. The prices are regulated by the Board of Commissioners.

Q. The prices that are charged there? A. The prices that are charged there. Originally the parties furnishing saddle horses charged their own rates, and they varied according to the competition; and then the old Board of Commissioners, in order to establish a regular system of rates, that there should be no extra exorbitant charges, they advertised for proposals to parties who were then doing business with saddle horses and carriages, who would take parties to certain different points of interest, at what prices they would take parties, and for the sole or exclusive privilege of doing that business. The bids were put in by four or five different parties to the Board of Commissioners. They considered those bids, and then from those bids that were put in they fixed the maximum rates which parties should be charged for the use of saddle horses to Glacier Point, or Vernal, or Nevada Falls, the top of Yosemite Falls, and all the different points of interest; but instead of giving them the exclusive right, they let any one and all that might come in at that time, use saddle horses to carry them to the different points, but only charge those rates; and for about three or four years the old Board gave notice that any one might come in and do business there with saddle horses and carriages, by paying a certain rental per annum on the saddle horses, per head, and on the carriage horses; \$3 a head for saddle horses, and \$4 a head for carriage horses; and the business was run in that way for several years.

MR. TULLY: Are there any provisions, or accommodations, or facilities offered to outsiders, other than those men that enjoy those privileges, of providing themselves with hay and grain and other necessary adjuncts to a saddle train, if they should come into the valley? Would they find there any conveniences by which they could stop in the valley and go on and carry on their business there; the business for which they came? In other words, to store their hay, and a place for their horses to run? A. They could not, without getting a permit and a lease from the Board of Commissioners.

Q. There are not such facilities offered to outsiders now? A. No.

Q. Unless they get them under a lease from the Commissioners? A. No.

Q. Is it not a fact that the absence of any provisions or anything in the way of such accommodation as I refer to, operates as an actual barrier to the introduction of saddle trains from the outside? A. I presume it is so. It operates to that extent. Yes, sir; or in that manner to a certain extent.

Q. If there were openings there, barns and little houses, small houses, convenient for the storing of saddles, and places to take care of horses, and places to store away hay and barley, that an outsider coming into the valley with ten or fifteen or twenty horses—some poor man who didn't

have a hundred and fifty—if he would haul in his hay and grain, don't you think it would be a better plan to open that valley and to give him access; let it be known to the outsider that he might come in there and find a place, by getting a permit to come in there and paying a rental for the houses and accommodations that he has while he is there, don't you think it would be an inducement to people from the outside to come in; in other words, as I first stated, that the absence of any accommodation of that kind operates as an actual barrier to others coming in there to attempt to compete with those other parties who have those facilities? A. Yes, sir.

MR. TULLOCH: What does it cost for a party to see the wonders of the valley? What does it cost for a guide and a horse, a day? A. The regular charges, for the regular trips, are \$3 a trip for a horse, and \$3 for the guide and his horse. That is for one man or for six or eight. If there is more than one man it is divided pro rata among the company.

Q. Have you not known a number of parties who had to pay \$6 a day and then pay the guide besides? A. I have known that to be the case on certain trips, where they make what are considered double trips.

Q. In one day? A. In one day, where they make double trips. These rates are fixed, not by the day, except on the level of the valley; they are fixed by the trip; a trip to Vernal and Nevada Falls; a trip to Glacier Point; a trip to the top of Yosemite Falls; a trip to Eagle Point; the prices are established for those trips, and not by the day.

Q. I thought it was by the day? A. No, sir; not by the day. The only day trip there is for a horse under the saddle is around the level of the valley. That is \$2 50.

Q. When you make double trips in a day what do you say it was? A. If you make a double trip you pay \$6.

Q. \$6; and in addition to that you have got to pay the guide? A. You have got to pay the guide the same price that you pay for your horse.

Q. That would be \$6 more. That would be \$12? A. Divided among the party, the guide is.

Q. If there is but one party, it is \$12 to him? A. Unless they make special rates, it is.

Q. Do they ever make special rates? A. Under certain conditions I think they have made them.

Q. Do you know they have made them? A. They have made them with regard to special excursion parties; for instance, to school teachers that came in last summer they had reduced rates on carriages and saddle horses; and in other instances where there has been large excursions come in, under certain conditions they have had reduced rates, special rates, both on the stage and after they came in there.

MR. TULLY: School marms are a privileged class, but the ordinary visitor and tourist as a rule, has to come out with his little old \$6 or \$12? A. Well, they have to come out with the regular charges, as a general thing.

Q. The next charge is: "Reduction of rentals to the prejudice of the State's income." I understand that applies to the hotel privileges and another privilege that has been granted; these single privileges, for instance. A. My own idea is that the rentals are all too high there and should be reduced, and that the State should make appropriations and make up the deficiency.

THE CHAIRMAN: That is hardly an answer to the question.

MR. TULLY: Do you know of any instances in which reduction of rentals to the prejudice of the State have been made? That is the question. Where the State has been injured by reducing rentals? Where the best interests

of the State have not been subserved? A. I hardly know whether it has been so or not. It was reported last summer that Coffman & Kenney have had their rent reduced for certain reasons. I never understood fully what the reasons were, and I am not prepared to say what the reasons were that they were reduced.

Q. You have heard there was a reduction? A. I heard there was a reduction.

Q. "Failure to recognize their own contracts." I understand that applies to any contract that they have made of any kind, whether for labor or otherwise, and that they have failed to comply with the terms of their contracts; with the terms and conditions of their contracts? A. I don't know of any special circumstance of that kind, except as applied to the trail built by Conway, called the Eagle Point trail. Those trails were built on certain conditions. The Commission allowed certain persons to build certain trails, on condition that a full account should be kept of the cost, and that they should be paid. If ever the State had the means to buy those trails, the parties building the trails should sell them at a discount of 10 per cent per annum on the first cost, for a term of ten years; and if they failed to buy them within the ten years, those trails reverted to the State free of charge. Well, in the case of Conway, he had been using his trail some three or four years. They had bought out the Glacier Point trail, bought out Snow's trail to the Vernal and Nevada Falls; and as those were free trails, and Conway's was a toll trail, the parties, as a general thing, took the free trail, and left out the trail that they had to pay \$1 a head on their horses for; and Conway applied for pay for his trail under those conditions. He applied at a time when, according to the contract, the face of the writing, like the face of a note, showed that what was due was \$1,800, and the Commissioners at that time offered him \$900; and, as he says, they wrote out a writing stating that he accepted it, as free and ample and full compensation for the trail, which he refused to sign.

Q. Well, what became of the contract? What became of that case? What was done with it? A. After that the trails were all declared free. Conway had a man on his trail collecting toil. The Guardian, Mr. Hutchings, with a party, went and put him off the trail, and passed over the trail free of charge. Conway had him arrested, and the Justice fined him \$5. Then, at the next session of the Legislature, after one year more had expired, and the amount due on the contract had been reduced 10 per cent for that year, the Legislature appropriated money and paid him \$1,500 for his trail.

Q. That was the outcome of the whole transaction? A. That was the outcome of the whole transaction.

Q. He got \$1,500 from the Legislature? A. Yes, sir.

Q. He didn't get it from the Commissioners? A. No.

Q. His contract was originally with the Commissioners, was it not? A. It was with the Commissioners.

Q. Was that a contract in writing? I believe you said the contract was in writing? A. Yes, sir; to the best of my knowledge it was.

Q. The Commissioners then refused to pay it? A. The Commissioners offered to pay him \$900. He refused to take it because it was not according to the contract.

Q. He appealed to the Legislature? A. Yes sir.

MR. GARDNER: What year was that, Mr. Clark; about what time? A. Well, it has been—I couldn't say for certain, maybe—about five years ago he received this pay, I think.

Q. Were you on the Commission at that time, Mr. Clark? A. No; I was

a Commissioner at the time he was granted the privilege of building the trail, but not at the time the offer was made to buy him out.

Q. Were you on the Commission at the time the Commissioners declined to buy? A. No, sir. The old Board had been entirely legislated out of office by the new Constitution, which specified that no Commissioner should hold office more than four years. The new Board was appointed under Governor Perkins. That Board was in session and acting at the time they refused to pay.

Q. Is there any Commissioner on the present Board that was on the Commission at that time? A. Well, I think there is, though I have not kept the full run of the changes that have taken place, as they are changing every two years now; four of them appointed every alternate two years; and I wouldn't say certain, but according to my best belief there is some of them on the Board now.

Q. You don't know the name of any of them? A. I couldn't name any one of them; there may not have been any one, because I have not kept run of the changes. The more I think of it, the more I think there is not one on the Commission that was on at that time; it is a matter I had not thought of at all.

MR. TULLY: "Withholding from citizens facts concerning the acceptance of the Stoneman House, and illegally leasing the same." Do you know anything about that charge? A. I do not, sir; I know nothing about it except what has been published in the papers, what everybody knows.

Q. "Rendering useless the district school of Yosemite Valley?" A. Well, that charge as it is specified there is not correct, because the school is still in existence. There has been a great reduction in the number of scholars, but the school still exists, as usual.

Q. Well, to what is it attributable—the reduction in the number of scholars? A. Well, when Harris left the valley, Harris and Leidig had families, each of them had large families. Each furnished a large portion—more than half the scholars that went to the school; the two together. They have both left the valley on certain conditions, or under certain circumstances, and consequently the amount of scholars is reduced very much from what it was, but not sufficient to destroy the public school. It is within the legal status of support by the school law.

Q. Do you consider that the Commissioners were responsible for that reduction? Do you know any act of the Commissioners that would lead you to believe that the reduction of the number was directly attributable to some act of the Commissioners? A. I don't think it could be attributed to them.

Q. You think it was attributable simply to the fact that those gentlemen chose to go out of the valley under circumstances that were satisfactory?

A. Yes, sir.

Q. They went out voluntarily? They were not put out, were they? A. No.

Q. You don't consider that the Commissioners are responsible for their retiring from the valley? A. I don't think they are, at all. I don't think they are in anywise responsible for the reduction of the scholars in the school.

Q. There is no circumstance that you know of there that is attributed to any act of the Commissioners, that would tend to destroy the utility of that school? A. No, sir.

Q. "Neglect of public roads and trails within the grant?" A. Well, there has been some complaints made at times with regard to the roads not being in good repairs for carriage driving.

Q. About what time; since when; about what time were those complaints made, and since when? A. There were some made last summer, when the whole force of men were engaged on the grounds and work up about the Stoneman House and Royal Arch farm; the trails were somewhat neglected in the lower part of the valley.

Q. The trails and roads? A. The roads; I mean the carriage roads and trails, in places; not so as to render them dangerous, but not so convenient and easy to ride on as if they had been put in better repair.

Q. To what was that attributable, do you think—to what particular act of the Commissioners? A. I don't think it was attributable to the Commissioners at all. It was simply a neglect or oversight on the part of the Guardian for a short time there.

Q. To look after it? A. Yes, sir. The Commissioners had nothing to do with it particularly.

Q. If the Guardian had attended to his duties zealously, were there means at his disposal, could he have kept those roads in good condition? A. The amount of business which was going on took up his time above. That could have been done, I suppose. Men could have been taken off of the other work and that improvement could have been made.

Q. He was giving his attention elsewhere, and neglected those roads on account of his attention to business elsewhere in the valley? A. Yes, sir; they were considered safe and easy enough, as a general thing, but still there were complaints made.

Q. "Employment of State labor upon work for private parties." Do you know of any instance in which persons in the employment of the State were working or did work for private parties? A. No, sir.

Q. You know nothing about that? A. I don't know anything about it.

Q. "Failure of the Board to properly manage the Yosemite Valley in accordance with the conditions imposed upon the State by the United States." That is very general and very broad. A. I can't say that I think they have failed. There is a difference of opinion in all bodies of men to transact business as Commissioners or as Courts or any other body of men; there is a difference of opinion, and the public might vary in opinion different from what the Commissioners would with regard to the management.

Q. That question is a summary; it covers the whole ground of all the questions we have gone over? A. It is a very hard matter for any Commission and the public at large to agree positively upon any points or very few points.

Q. Your opinion about it, as to whether you would think they were willfully negligent? A. I do not.

Q. Or failed to comply with the requirements of the law, as they understood it? A. I think they have done the best they could according to the best of their judgment, and the laws under which they acted, and with the means which they have had to carry on the improvements there; I think they have done the best they could.

MR. TRUMAN: Do you think what is termed a second class hotel, in the Yosemite Valley, would be patronized enough to pay? A. Not if they had to pay much rent for it.

Q. Do you think any parties who go into the valley as campers would patronize a second class hotel? A. Well, do I understand by that, that instead of coming as campers they would come in to patronize the hotel, without coming as campers at all?

Q. I don't refer to the first class hotels; I don't mean in contradistinction to the first class hotel, because Mr. Tully spoke of a second class hotel,

and I think it is a good subject to think of. I have never thought of it, except in looking over the minutes of the Board for the last two years; they have had it in consideration, but believe that it would not pay; that nobody would go there; that ninety-nine out of one hundred or more would want to go to the first class hotels; that they only stay a day or two, and because generally the people that went into the valley were people who lived at a first class hotel, or went to a first class hotel, or were first class people, or else were too proud to go to a second class hotel if there was one there—and, therefore, that it would not pay; and it was not considered that it would be expedient to keep them standing there as eyesores on that account; that there would never be anybody who would patronize a second class hotel. I wanted to touch on the campers; that is the reason I touch on that question. I will ask you that second question over again. Do you think any parties, who generally come into the valley as campers, would patronize a second class hotel? A. They might, to a very small extent, but not to any great extent, according to my judgment.

Q. The camping parties all carry in blankets and some other sleeping apparel, do they not? A. Yes, sir.

Q. If there was a second class hotel then that charged from \$2 50 to \$2 a day, and Mrs. Glynn only charged \$1 per day, wouldn't these campers go to Mrs. Glynn instead of a second class hotel? A. Some of them would, probably.

Q. Have you ever heard a human being complain of the rates for board in the Yosemite Valley? A. I have heard some tourists think the charges were too high; in driving them around the valley and having conversation with them as I come in contact with them, some of them complain, but very few of them; most of them think the charges are very reasonable when they come to understand the conditions upon which business is done there in the valley; that they are so far from the base of supplies, and so far from help, and the difficulty of running a hotel in there being so much greater than it is on the outside, according to the fare they get, the majority of them don't think they are charged any too high, and some think it ought to be higher.

Q. Did the people who complained generally, if you heard any, did they impress you as being people who had been at other like places of resort? A. They would impress me as being people who had been accustomed to travel a good deal.

Q. I was in the Yellowstone Valley last August; I have just been to the Raymond and Sierra Madre Villa, and Coronado, which are accessible, and I paid \$4 a day at all these places for less than I got at the Stoneman; and in the Yellowstone we had to pay \$5 a day for horrible board and indifferent quarters. How many acres are there in the floor of the valley? About how many? A. I couldn't answer that question correctly.

MR. TRUMAN: How many are there, Mr. Guardian?

MR. McCORD: There are two surveys. One is from wall to wall. According to Mr. Whitney's survey, the official measurement, it is eight thousand four hundred and eighty acres. Hoffman's survey gives seven hundred and fifty-four acres of meadow land and three hundred and sixty-six fern land; that is the level floor of the valley.

THE CHAIRMAN: How many acres are fenced? A. Inclosed within the limits of those fences there has been not far from seven hundred acres inclosed; a year ago last fall, the fence of the Bridal Veil meadow, some portion of it was broken down, and that never has been put up so but what it lays open to a certain extent. Some of the old fence remains there; and whether that will be inclosed in the future or not, I don't know. The

Leidig pasture, some of the fence is down. Whether that will be fenced up and used for campers in another year, I don't know.

Q. If there are about between seven and eight thousand acres upon the floor of the valley, and between six and seven hundred acres fenced, how is it that the greater part of the floor of the valley is shut out from free access to tourists? A. That fence incloses the meadow ground instead of the high dry pine land, the higher pine land around; rather barren land among the pines, but the meadows border more or less upon the borders of the river, and it is more desirable for tourists to travel along the borders of the river around in the meadows, where they can get flowers and things of that kind, than it is to travel among the pine trees and on the more barren portion of the valley.

Q. Well, now, as a general thing, when the people are there, the largest crowds of people, do they frequent the meadows? Do they wish to frequent the meadows or the woods, the most? A. Well, there are more or less groves in connection with the meadows. They generally wish to go where they can get flowers, people who are stopping there and not able to ride to the different points.

Q. Are not the meadows generally wet? A. Early in the season they are, later in the season they are dry.

Q. Considering that there has been nearly thirty-six miles of road built there, isn't it necessary to do more or less fencing to keep stock—cattle, cows, and oxen, and other animals—from going on these roads? Wouldn't it be dangerous for these hundreds of horses to be running around? A. Yes, sir.

Q. If there were two or three butcher shops, or bakeries, or blacksmith shops in the valley, there would have to be just so many places built for such purposes, would there not? A. Yes, sir.

Q. Wouldn't the Commission have to pay for them, according to law? A. Pay for the building of them, you mean?

Q. Yes? A. Yes; they ought to pay for them if they allow them to be put up.

Q. You say that for awhile the trails were neglected by the Guardian during the past summer. What trails were neglected? A. I don't know anything of my personal knowledge about the trails, for I was not on them. I have no knowledge of the trails. I have some knowledge of the roads. I said there were complaints made; but of my own knowledge I had no knowledge of the trails; only of the roads.

Q. Well, those number amongst the multiplicity of complaints that you hear off and on about many things, don't they? A. Yes, sir; daily, some complaints.

MR. TULLY: Now, Mr. Clark, the Major has directed your attention to two classes of tourists, or at least two classes of visitors there; one class has reference to the aristocratic visitor—the traveled man who has been to Europe, and the Yellowstone, and other parts of the country; the other class that the Major's questions represent are campers, those men who come in there and sleep on their own blankets. Is there not a class intermediate between those who would prefer, in your opinion, to go there and not take their blankets, provided they could find more reasonable accommodations—go and sleep in a cheap hotel, and eat at a cheap hotel, rather than be incumbered with their blankets and the necessary annoyance and inconvenience of camping out, if they had cheaper accommodations? There is an intermediate class—the people who are not very aristocratic, and yet are not footpads. A. There are some who camp and some who go to the first class hotel who would go to the cheap hotel if they could have it, I presume; but there are many who prefer to camp. There are many

rich men, wealthy men, who go on a camping expedition and enjoy it better than they do to put up at a hotel.

Q. Well, now, I understood, awhile ago, in speaking about the area of this valley, that one measurement, seven thousand acres, I believe, is from wall to wall; and I understood the gentleman further to say that seven hundred acres—there was a strip that I understand to be the floor of the valley, the floor proper—it don't include the little outside that is broken up, and is not the valley proper. That is about seven hundred acres, is it not?

MR. McCORD: It is about eleven hundred and fifty-one acres.

MR. TRUMAN: About the meadow; that might be technically termed the meadow; but there is more of the floor, lots of level land, that runs up into nearly two thousand acres of pretty near level land.

MR. TULLY: We will call it eleven hundred acres. Did I not understand you to say that the valley proper, the meadow lands there that were fenced in, were about seven hundred acres? A. Somewhere near about seven hundred.

Q. That would leave of the meadow land proper, the floor of the valley, that would leave the difference between seven hundred and eleven hundred that were open and not fenced in? A. Yes, sir.

Q. That would be about four hundred acres of the floor of the valley that was not incumbered with these fences, assuming that that is the difference between eleven hundred, which is the measurement of the floor proper, and the amount that is inclosed, which is assumed to be seven hundred. Then there would be about four hundred acres of the valley proper, the meadow land, that is open and unfenced? A. I should think there was all of that, or more.

MR. GARDNER: If these meadows had been left unfenced, would the land there not be just as barren as the balance of the floor of the valley? A. If the same amount of stock had been run there, they would have been just as barren; they would have eaten up everything just the same without the fence as they do with it.

MR. TRUMAN: Speaking of intermediate people, isn't there provisions made at both the Barnard and Stoneman House, and haven't we ratified them, that there shall be second class accommodation given them? Haven't they got dining rooms and lodging rooms for people who don't want to pay \$4 or even \$3 a day? A. They have dining rooms, both the hotels have dining rooms, at less rates, but I don't know that they have less rates for lodgings.

Q. The rate in bulk is less? A. Yes, sir.

Q. It is a second class rate at a first class hotel? A. Second class tables. That is, if you go in the first class dining room you pay a dollar; you go in the second class room and pay four bits a meal—50 cents.

MR. TULLOCH: You spoke awhile ago, in answer to Major Truman, about the lands having been fenced up and the stock kept out, did you not? That it kept the cattle and horses from running out on the valley? A. From running at large; yes, sir.

Q. How comes it that there are several hundred head of horses and cattle up there kept in the inclosure and kept from running out in the valley? A. There are not several hundred head of stock in the valley, altogether. Cattle, and horses, and all amount, perhaps, to about one hundred and thirty or one hundred and forty head, or maybe one hundred and fifty; say one hundred and fifty head.

Q. You gave in evidence, I think, Mr. Clark, awhile ago, that you didn't think if there was a second class house established that it would find con-

siderable or much patronage, did you not? A. I didn't think it would pay if they had to pay much rent to the Commissioners for the privilege.

Q. Then that being the case how do you account for the success, if that wouldn't pay under the conditions, how is it possible for a first class house that contains both a first class table and a second class table to pay?

A. Well, it requires no more help to set the two tables than it would to set one; the expenses are no greater; the rent is no greater. It all comes in together and makes enough to pay the rentals and help for the season; it doesn't come so hard upon the proprietor who runs both classes of tables; the expense is not so great in proportion as it would be to run a second class hotel, I don't think.

W. C. PRIEST.

Being sworn by the Chairman, testified as follows:

MR. TULLY: State your name? Answer—W. C. Priest.

Q. Where do you reside, sir? A. I reside near Big Oak Flat, Tuolumne County.

Q. From these questions here you understand the object of this investigation and its general nature? A. Yes, sir; that is, I have heard the testimony of quite a number.

Q. Your name appears here—I infer from the reference made here, "Regarding enforced stage line pools and his Commissionership." Is that it? A. I have been interested and am yet in the stage line that runs in the summer months to the Yosemite Valley. Some years it pools with the other side and some years it runs independent. Some years it runs independent of the other side and some years it pools. It was last year pooled. I don't know what I will do with it this year.

Q. What was the nature of that pool? A. Well, it is to prevent cutting rates. When they run opposition they cut rates to such an extent that nobody makes anything out of it.

Q. Then they pool their issues, I understand? A. Yes, sir.

Q. And establish a fixed rate? A. Yes, sir. You are not quite right about that. For instance, ours is considered the weakest side. The other side has the Southern Pacific behind them, and we have got nobody but ourselves.

Q. Who is "ourselves?" A. It is a little community of stockholders that own that stage line up in our country, where we live.

Q. What is the name of the stage company? A. The Great Sierra Stage Company.

Q. And your competitors are whom? A. Washburn & Company, on the Raymond route.

Q. Then the competition is between your side and the Washburn side? A. That is it; yes, sir.

Q. Go on and state anything you know. This says, "Enforced stage line pools." A. Well, there is nobody enforced but the owners of the two lines. No one else, I think, has anything to do with it.

Q. They pool their issues? A. Yes, sir; they did one year; last year.

Q. What is the general effect of it? A. Well, that I can't tell.

Q. Upon the valley and upon the tourists who go there? A. Well, it may be a little tough upon the tourists, but it is tough on the stage company to act otherwise.

Q. Then it is not like the old fable of the boys and the frog—fun for the frog and death to the boys? A. You know very well, that railroads and

everybody else pool things all over the country, just the same as these stage companies.

Q. Unfortunately for the public at large, that is the case. A. You are correct about that, sir.

Q. Then it is true that there are times when the different stage companies form what is called a pool? A. That is it; yes, sir. They did last year. Whether they will this, I don't know.

Q. The object is mutual protection? A. That is it; yes, sir.

Q. What is the effect of that pooling process upon the traveling public and the general interests of tourists and persons who want to go into that valley? A. It is an injury, but there is a necessity for all these things; it is a necessity in this way: that our country up there is full of livery men, livery stables—Milton, Copperopolis, all that whole country—Sonora and everywhere, is full of livery; and if a party of tourists want to visit the Yosemite Valley, they can consult the agent of the two lines in San Francisco, or they can telegraph, or come up there, and make, probably, better rates with the livery men. Last year, on account of this pooling and high rates, there were a great many people hauled in there on livery teams; so that we have got no good thing on the pooling business. On the pooling we have not got a very good thing, for the reason that these other folks cut in on us when we undertake to do that.

Q. What is the effect of that cutting in, so far as it affects? A. It is an injury to the stage companies. There has nobody got rich out of it, or even made money out of it. It is a hard scratch to keep even, and some don't do that.

Q. How do you run those lines? What are the conditions so far as the Commission is concerned? Do you obtain your license and permission to run those lines? A. No; we have no license. We rent barn privileges for stabling.

Q. From whom? A. From the Commissioners. Our side does. I don't know how the others get theirs. They have more privileges than anybody else; but we pay for ours. We pay for a small stable for eight horses; we pay \$60 for the season, and for a little office that we occupy there, \$10; making \$70 a year.

Q. Well, in making your lease or renting your privileges there, is there any stipulation that you shall not or shall do this thing? A. No, sir.

Q. You get your privileges and then act as your own interest dictates? A. Yes, sir; I never was questioned but once on that subject, and that was by one of the present Commissioners, J. H. O'Brien. He asked me once, in talking about that matter, if I thought the Commissioners would allow it. I told him: "The devil take the Commissioners." I didn't see what they had to do with it; that they pooled everything in the valley, and I didn't see what right they had to pool anything outside of it, or prevent its being pooled.

Q. Do the Commissioners know that such pools were formed? A. Oh, yes; it is no secret. I would tell every member of that Board as quick as I would tell you.

Q. Have they ever spoken to you and remonstrated in regard to it; or made any suggestion with regard to the impropriety or propriety? A. No member of the Commission has ever mentioned it, except Mr. O'Brien, and he only mentioned it in that way, to know if I thought they would stand it. They couldn't help themselves. I wouldn't care whether they thought well of it or not.

Q. Do the Commissioners have anything to do with regulating the prices charged in going into that valley? A. No.

Q. You are perfectly free? A. We sell the tickets in Los Angeles, San Francisco, Stockton, and all over the country. We don't sell tickets in the valley. There is no occasion to sell them except to some fellow that strays in and is anxious to get away; maybe went in on foot, and is anxious to get out, and pays his way out on the stage line.

Q. Isn't it a fact that this pooling process has a tendency to keep up the prices? A. I suppose it does, certainly.

Q. If it were not for this pooling process, the probabilities are that outside competition would come in and reduce the prices? A. It does come, Mr. Tully; these livery men cut in on the stage lines all the time. There is not so much on the Raymond route, cutting by livery men, as there is on this route, and the reason is this: their tolls are so exorbitant there when they put them on, which they do, to keep livery men off; they don't want them there; but on the Big Oak Flat road the tolls are so much smaller, so much less than they are on the Raymond road, that it is on this side that we get crippled. But the Commissioners never have interfered with the stage lines, as far as I know, and I think have no right to.

Q. You have said, I believe, that they have nothing to do with the fixing of your prices, at all? A. No, sir; nothing at all; never have interfered, nor have no right to. They may do some things they have no right to, but that is something they have not meddled with.

Q. I was going to ask you if the privilege that you enjoy there from the Commissioners, if the conditions under which you get it do not operate—if it does not tend to exclude and discourage others from coming there? A. Oh, not at all. No, sir.

Q. It is the fact that you do pool your issues there? A. We did, one year, Mr. Tully, last year. This year we don't know what may be done yet. Probably we will pool and probably fight each other. I can't tell. There is no secret about it.

MR. TULLOCH: Mr. Priest, before you pooled issues with the other company, or these parties, do you know of any exorbitant rates having been charged by the Washburn company, and of which the Commissioners had some knowledge? A. Mr. Tulloch, I think there has been no man ever made any money in staging into the Yosemite Valley. Washburn's company now—it is no secret about the prices. Some of these tickets have been sold as high as \$55 from San Francisco and return; that included railroad, stage fare, and the whole business. Well, other years it is cut away down. Last year on their road they sold tickets for \$50. I don't know if they sold it for less; but you take these excursion parties, they always get reduced rates, but they come in great bunches and big parties. It makes it very expensive to handle them; and then on this side, on account of the livery men cutting in on us, tickets were sold last year that didn't pay horse feed.

Q. Do you know what the Hayes party had to pay once in coming out; making the round trip? A. I only know—well, yes; I know, too. I was four or five years on the Yosemite Commission. Mr. Clark was on the Commission when I first went on the Commission. Mr. Clark was a member and the Guardian of the valley. I was appointed, and then reappointed. During the time that I was on the Yosemite Commission the Hayes party came to this coast, and there was a meeting of the Board of Commissioners in San Francisco; and at that meeting—the Hayes party was already on the coast, or would soon be here—and this question was talked over. The Commissioners felt well towards them, and wanted to give the State a good showing—make a good showing to the party—and that question was talked of; whether it would be right and proper and would not be the best for the inter-

ests of the people of this State to show them as many of the sights as possible, and at the State's expense, or at the Commissioners' expense—the same thing. Well, some thought one way and some thought the other; and Colonel Jackson was then on the Board, and the Colonel was called on, he being a lawyer, for advise in the matter. The Colonel thought the thing over a little bit, and says: "Gentlemen, we have no right to spend one dollar in that way. We have to give that up." So that settled it. In a few days, or a very short time after this—I was then interested in staging from Milton to the Yosemite Valley; and Mr. T. J. Madison, who lives at Murphy's Camp, Calaveras County, was interested in staging from Milton to the Calaveras trees; and him and I met and went down the road to San Francisco. And on the way down—that was already our object—was to go down to try to get that party to go either in or out over our road—and everywhere along the road everybody says: "You are going down to try to get the Presidential party over the road." We told them, "Yes." Well, we got to San Francisco, and we found that Colonel Jackson had the managing of the party, directing them when and where to go, and how to go, and all that; and we called at his office. He was then editing or managing the San Francisco "Evening Post." We called on him; he knew us both, and we told him the object in calling upon him. He says, "Well, gentlemen, I am sorry to tell you that I think you have no show to get that party." We asked him why? He says, "Washburn & Co. have offered to take them from here to the Yosemite Valley, pay their railroad fare, pay their stage fare, pay their meals there, their beds, and all their expenses on the trip." Mr. Madison says, "Well, that is pretty tough, but we have got to get them, if possible, our way." So we talked the matter over, and it was arranged that Mr. Madison and I would take the responsibility—I kept a hotel where I lived and a station for Yosemite travel, and he was interested in some hotel at Murphy's, and Mr. Sperry at the Calaveras trees, and it was arranged that we would take the chances and stand good for the business; and we told Colonel Jackson that we would take them one way on those terms, if Washburn & Co. had agreed to. He said he would see what he could do; and with that we went out and told him he could telegraph us to Stockton, Sonora, or Murphy's, or wherever we might be at the time, and let us know if we were going to get them. The first thing we knew they had been into the valley and out again, and we never got to see them. Well, a short time after this there was another meeting of the Commission, and at this meeting Washburn & Co. came in with a bill for something like \$600. Dr. Briggs is here, I think, and would have the bill, or would know the exact amount. Dr. Briggs told me they claimed that they hauled in fourteen, when there was but thirteen; it don't matter about that; but Washburn came in with this bill, charging the Commission for hauling the Hayes party to the Yosemite Valley, and we were all surprised that he did—at least I was, and I think all the Board was; and he says, "Well, I will have that money; I am going to have the full amount, too." And we took a vote on it in the Commission, and all voted no except Colonel Jackson. Colonel Jackson says, "I will vote yes as a complimentary vote to Washburn & Co," and did so. So I supposed that was the end of it. Not very long after that I resigned as a Commissioner, and since then, not very long, I think, after, that money was paid to Mr. Washburn.

MR. TULLY: That bill? A. Yes, sir.

Q. How much was it? A. Somewhere a little more or a little less than \$600.

Q. That was for bringing those parties in? A. That was for bringing

President Hayes and his party from San Francisco to the valley and return.

Q. The same party who Mr. Jackson had told you they were going to take in? A. Yes, sir; they were going to take in, and take for nothing. Here is Mr. Gardner, who is well acquainted with Mr. Madison, to prove it. I can bring Mr. Madison here and prove every assertion I have made.

MR. GARDNER: Yes; I know him myself.

MR. TULLY: The other parties who you represented there in talking with Colonel Jackson about that, offered to do the same thing? A. Madison and I was in together.

Q. If the others took them in for nothing, they would do the same thing on your line? A. Yes, sir; we volunteered to do the same thing, whether they did or not. We offered to take them one way, in or out, by the Calaveras trees, and show them as much of our route as possible, on the same terms that Colonel Jackson represented they would take them in and out for.

Q. He represented that they were going to take them for nothing? A. Nothing.

Q. And subsequently put in a bill for \$600 or \$700? A. Washburn & Company put in a claim, claiming they had made no such agreement.

Q. Who paid that money? A. The Commissioners. The State paid it, of course.

Q. Do you know upon what grounds that was paid? Were you a member of the Commission? A. Not at that time; I had resigned before this happened; before the money was paid. I was on the Commission when it was voted positively not to pay it.

MR. GARDNER: Were any of the present Commissioners on the Board then? A. Madden was on, I think, at that time. I am not positive. Let me think it over a little bit. I am not sure, but it rather strikes me that Madden was on. Madden has been off and on this Commission almost since its organization; since the valley was ceded to the State; he is the oldest member now living that has served on that Commission.

MR. TULLY: You said that that bill was paid. Where do you obtain your knowledge of that fact as a fact? A. There is no secret about it. Here two years ago, at the investigation of that Yosemite Commission, our Senator from our county, Mr. Reynolds, now here at Milton, was one of the committee to investigate that matter. Of course the old man was pretty hot and talked about the frauds and all that, like a great many other people; that Hayes was a fraud, and all that sort of thing; but that didn't matter, but I was talking yesterday with Reynolds in regard to the same matter. Briggs is here. He will acknowledge the whole business. He was then Secretary, and no doubt paid the money, or drew the warrant for the money. There is no secret about that. Mr. Washburn will acknowledge receiving it. He can't help it, because I know he got it.

Q. It was paid by the Commission? A. Why certainly; yes, sir.

Q. Paid from the State's money? A. Yes, sir. No doubt Dunn's books here will show the warrant. It was a little more or a little less than \$600. I am not very particular about dates, but I think it was about four or five years that I was on that Board of Commissioners. I was appointed and served a term, and reappointed, and got disgusted and then quit. Mr. Clark here was on the Commission at the same time. How long did you serve after I was appointed, Mr. Clark?

MR. CLARK: I served until the old Board was legislated out under the new Constitution. I was not on the Board at the time this transaction

took place. That was after the new Board had been appointed by Governor Perkins.

THE WITNESS: Have you ever heard this business that I speak of?

MR. CLARK: I have heard it.

THE WITNESS: Do you know it to be a fact?

MR. CLARK: I believe it to be a fact.

THE WITNESS: I know it is a fact.

MR. CLARK: I know nothing only by hearsay.

THE WITNESS: Do you remember, Mr. Clark? It must have been about 1883.

MR. CLARK: You were appointed by Governor Perkins in 1880? A. Yes, sir; I was reappointed by Governor Perkins, but I think I resigned in 1883.

MR. CLARK: You resigned before your term expired.

THE WITNESS: Yes; I resigned; I got sick of it, and my reason for getting tired of this thing was, as every old member of that Board knows, the executive committee is the whole business, or was in my time; like this Anderson trail, that has made such a thundering row and squabble. I was in the Yosemite at one of the general meetings, and we went up and looked at it, and I knew—I had been over and through that cañon often enough to know that that thing was entirely impracticable for the money that we had or could get; and it was not necessary to build it, anyhow; there was already a trail that answered the purpose. I opposed its being built from the start; and when we all went up and looked at it—Mr. Ladd, and Mr. Sperry, and Mr. Meany, and some others were on the Commission at that time—and it was unanimously agreed except by Dr. Briggs—I think he kept on with the business—that the thing should stop right there. But the Commissioners met in San Francisco, and either the executive committee or Dr. Briggs, on his own account, ordered the work to go on, and it did go on, and that man Anderson was robbed and swindled.

MR. TULLY: After the Commissioners had decided that it was not necessary? A. Yes, sir; it was decided, Mr. Tully, that the work should stop. We considered it impracticable to build it. We had not the money to do that.

Q. The executive committee, nevertheless, went on? A. Either they, or Dr. Briggs, on his own account, or somebody, went on with the work.

MR. GARDNER: And never paid Anderson? A. Never paid him.

MR. TULLY: Never paid for the work? A. No, sir; the latter part of it.

Q. You referred to the investigating committee? A. That was four years ago.

Q. Did you testify before that committee? Were you examined as a witness? A. Did I testify at that?

Q. Yes? A. No.

Q. In regard to that investigation? A. No; I was not here at all.

Q. You were not summoned? A. No; it was an investigation of the Secretary and Treasurer's books. There was some wrangle about the way Dr. Briggs had kept his books, and this investigation was brought about to examine into it.

Q. By what authority was that investigation had? A. By the Legislature.

Q. A committee appointed by the Legislature? A. Yes, sir.

Q. Do you know what that committee found in regard to it? A. I don't know. I suppose it is easy to find it here.

Q. Then the work that was done in extending this trail that was ordered

by Dr. Briggs, or the executive committee, was nevertheless done, but never paid for? A. Well, no; it was not done.

Q. They continued the work? A. In the first place, Mr. Anderson had a very foolish contract. He was a very industrious, very energetic man, but had very poor judgment, and he thought this trail could be built for \$1,200 or \$1,500, and he took a contract to build it for that money, and it didn't any more than start it; it barely started the trail. That many thousands of dollars wouldn't do it; and after that amount was expended, then the Commissioners thought they would stop it, and ordered it stopped, and somebody then ordered it to go on again. Do you remember, Mr. Clark, how much was paid Anderson on that first contract?

MR. CLARK: His first contract was for \$1,500.

THE WITNESS: That is what I thought, but the State furnished powder and tools.

MR. CLARK: The first contract he was to furnish everything for \$1,500, but I was not then a Commissioner.

MR. GARDNER: Did his contract state that if he didn't finish it, he was not to get any pay? A. No; I think not. That second contract, there was no condition about it. He was ordered to go on with the work.

Q. Wasn't he to be paid then by the day? A. Maybe. I don't know if it was a private arrangement between him and the Secretary; I don't know how that was fixed.

MR. CLARK: Anderson told me after the contract had expired, that Dr. Briggs told him to go on with the work, and he would see that he was paid by the day.

THE WITNESS: I think myself that Dr. Briggs is the man to blame for the whole business. That is my opinion.

MR. GARDNER: The long and short of it is that Anderson did a great deal of work and got no pay for it? A. Yes, sir; that is, Anderson, on his first contract for \$1,500, no doubt owed his men.

MR. CLARK: He paid that all to his men?

THE WITNESS: He paid all of it, and then didn't have enough to pay, and he went on and hired more men and worked himself, and these men didn't get a cent, and he didn't, and he owed everybody. He was a very enterprising, industrious man, but had the most miserable judgment in doing anything of any man I ever knew. I knew him well.

MR. TULLY: Mr. Anderson has already testified in regard to that. He states that he did the work and never got the money; or, at least, that was his brother; that he did the work by the day. A. The trail is barely started. I believe now that \$15,000 or \$20,000 won't build a good trail there; and it is not necessary to have it there, anyhow. There is already a trail there which answers every purpose; that might be a little improved. There are a great many things that can be done.

Q. It is your judgment that even if the trail had been finished, and the money paid, that it would have been a useless expenditure of money? A. Oh, no.

Q. An injudicious expenditure? A. I think so. I think there are many other things that the money is more needed on than it is on that trail. That place, Mr. McCord, going up the ladder, between Register Rock and the Fall: are you going to make a trail there?

MR. McCORD: We are going to make one next spring.

THE WITNESS: That has been more needed than anything in that valley. It won't cost but a trifle to do it; a hundred or two dollars will make a good foot trail.

MR. McCORD: Do you know whether the Yosemite Stage Company pays anything or not? A. I do not; I don't know.

Q. Is it not a fact that they pay \$100 a year? A. I don't know a thing about it.

Q. It is a fact that they pay that amount? A. I never did know. It was never any of my business to know.

Q. You say the Commissioners didn't interfere with the rights of companies and persons on the stage lines? A. Not that I heard of.

Q. They never had any right to do it, did they? A. No.

Q. Hasn't that stage company the right to enter into pools with any other stage company? A. Certainly, they have that right.

Q. Hasn't your company that right? A. We have a right not to run a stage at all, if we don't want to.

Q. Hasn't your stage company a right to charge whatever it is a mind to? A. Certainly.

Q. Isn't it a fact that the business on your line doesn't last more than four or five months, or six months, or on either line? A. No; not more than that.

Q. The tolls charged on the other line wouldn't keep the road in repair, would it? The tolls charged from Raymond into the valley wouldn't keep the road in repair, would it? A. Yes, sir. That, I think, Mr. McCord, is a very exaggerated history or account of Washburn's road. If the Big Oak Flat Company, which I am on, hauled all the travel that goes over that road into the valley with their stages and paid nothing for it, it would not pay to keep the road in repair; but now every passenger that is hauled in over that road by the stage company pays \$1; the stage company is paid \$1 for every passenger that rides on its stages into the valley; every livery team that hauls a load of people in there, one or more, pays \$1. All the freight that goes in there is charged. In that way the Oak Flat road pays to keep it in repair; but if Washburn & Co. paid tolls on their roads into the valley, or their stages, in proportion to what a private team does going in there, they would not pay. That is where the secret of their success is—in paying no toll.

Q. It is because they own the road? A. Certainly; but here, in the Big Oak Flat road, there is some members of the stage company that own in the toll road. The thing is about equally divided; there is about half the owners of the toll road that don't own in the stage company, and about half the owners in the stage owns in the toll road.

Q. Isn't it a fact, or don't you think that if the Anderson trail was completed from where it is now to the other side of Vernal Fall, that it would be the best road to the Nevada Falls? A. It would be easier, certainly.

Q. Better grade? A. Yes, sir.

Q. Less snow? A. Yes, sir.

Q. Freer from accidents? A. Yes, sir; I don't know about the accidents. Did you ever know of an accident on them?

Q. No; but on account of there being less turns; less chance for accident? A. These trails never hurt anybody; but, Mr. McCord, that is a good thing if it was built, but I think the money is worth more than the trail. That is the way I look at it; but it would be a good thing if it was built, but it is next to impossible to do it. I have built a good many roads and trails, and know a good deal about what that is. I never followed it up; a dog or cat can't go up where that trail is to go. Now, Mr. McCord, can a cat or a man or a dog or anything go up around—

MR. McCORD: Not between the two trails at present.

JOHN CONWAY.

Being sworn by the Chairman, testified as follows:

MR. TULLY: You understand the nature of this investigation, Mr. Conway? Answer—Yes, sir; I believe so. I have not heard the charges, though.

Q. You have not heard the charges? A. I have not heard the charges.

Q. I will read you some of the charges here. I will go over all of them, but I am going to direct your attention to one branch of the business. [Reads charges to the witness.] Those are the general charges. You have been summoned here especially with regard to what you were supposed to know about the trail matters. What do you know with regard to the trails of that valley? Any of them, or all of them? A. I know all the trails that are in existence there. I constructed the greater portion of them.

Q. Do you know any instance in which money has been injudiciously spent in opening or improving of any of those trails? A. There is none that has been constructed directly by straight orders, except that Anderson trail, to my knowledge. They were all constructed by private enterprise.

Q. What do you know about that? A. The men that had them constructed, the owners put up the money, and paid the expenses; hired me, and paid me for building it. The Eagle Point trail I built out of my own money. The first thing was the right of way—the privilege—the right of way to construct the trails, and go on and build them; and there was leases issued, and the authority to collect tolls on them.

Q. On those trails? A. Yes, sir.

Q. When was that, Mr. Conway? A. Well, the first work that I did in the construction of trails, I believe was in 1871.

Q. Is this trail known as the Anderson trail? A. No, sir; it was that trail above Snow's, going up from the Yosemite Valley. I built that stairway up there by the Liberty Cap, at the head of Boulder Gulch, on the trail leading up to the Little Yosemite and Cloud's Rest. That was in 1871.

Q. You obtained permission or right of way from the Commissioners? A. This I built for Washburn and McCready. That was my first work in the Yosemite Valley. At that time, they were running saddle trains into the valley, on all the routes that were coming into the valley.

Q. Did you do that with money furnished by the Commissioners? A. Washburn and McCready paid me my wages.

Q. You built it for them? A. Yes, sir; that was their property up to to-day, so far as I know; they never were paid for that trail. They collected tolls for awhile, but they abandoned collecting any toll. They built it also from there on around to Glacier Point. On the trail through the Illoutte, I believe they collected toll for awhile; I collected toll a short time for them when I was working there.

Q. Did their lease or the conditions under which they got it, entitle them to collect toll? A. They told me they were authorized; they told me they were authorized by the Board to collect toll.

Q. You collected the toll for them? A. Yes; John Bruce was conducting their business in the valley at the time, during that season, and he told me he had authority from the Board to collect toll. When I was working there I collected toll for them.

Q. What year was that? A. That was in 1871. I never heard of them collecting toll after that season. I never heard that they were paid for the

work that I did for them; and others have worked; there was a lot of men employed to cut the trail around through to Glacier Point, that fall.

Q. You never heard that they were paid for it? A. I never heard that they were paid for it.

Q. Who has control of those trails now? A. The State; I have not been around them for several years.

Q. Do you know how the State obtained title? In other words, how the right of these parties that built it was extinguished, if it was? A. I never heard that there was any transfer by the parties to the State; it just merely took possession of it.

MR. GARDNER: The State may have paid for it for all you know? A. I don't see how it could; there never was any appropriation; I have noticed all the appropriations that were made.

Q. That was about eighteen years ago, is it? A. Yes, sir; that was in 1871 that I did that work. I left that; I had not quite completed all the work they had ordered me to do, when Mr. McCauley came after me to build the Glacier Point trail. That was in the latter part of November, 1871. I worked on that until we got stormed out; heavy storms and snows and we couldn't work any longer; we left for the season. I returned the next spring and helped to complete that trail up to Union Point. I had an accident there; came very near getting killed. After I recovered from that, the next work I done was for J. M. Hutchings. I built the road on the north side of the valley.

MR. TULLY: Did you build it for him as an individual? A. He paid me as an individual. That was before the property was purchased by the State.

MR. GARDNER: That was before the State had anything to do with it? A. The State had assumed authority there. We couldn't do anything without the consent of the Board. That was about all that the State undertook to do at that time, was granting those privileges to construct roads and trails.

MR. TULLY: That is about all you know about the trails? A. Yes, sir. Then in constructing my own is what followed. I constructed that, I think, in 1873; they gave me a lease of the trail. We had a good deal of trouble there in regard to business; the saddle train men. The conditions of the lease—the only thing that I can remember is, I was bound to obey all ordinances—conform to all ordinances—that the Board would pass in regard to the government of the valley. I couldn't do anything without their consent, the way I understood it. Well, the saddle train men had—it was in their power at that time to make or break any man's business, almost, there. They had control of the tourists; they would go where they would take them, and so on. If they wanted to take them up some other trail than mine—

MR. TULLY: They could boycott you? A. Yes, sir; use all their influence to go some other place.

Q. Were you boycotted; was your trail boycotted? A. That was the condition from the beginning. Well, in order to protect the business of my trail, I applied to the Board for the privilege of running a saddle train. They would refuse to furnish parties horses to go up the trail if they couldn't beat me any other way. The first application was in person, I think, in 1870. I asked the Board there to grant me that privilege, that protection, or to take the trail according to the conditions of the lease. The conditions were that they fixed the value at \$3,000; the nominal cost value at \$3,000; depreciating in value 10 per cent per annum; \$300 a year; at the end of ten years it was to become the property of the State; it was to

lapse to the State. Well, I asked the Board to either grant me that protection or to take the trail at the unexpired valuation. That was an informal meeting held by what was styled in them days "the new deal." Mr. Perkins informed me that it was an informal meeting; that they had not come to transact any business; that there was no money to pay me for the trail, or they would take it; but he would endeavor to have an appropriation at the next meeting of the Legislature to purchase the trails; and further, he stated, that the first business meeting for me to make my application in writing and it should be granted; and in June, 1881, at the next meeting, the first meeting of the new Board, I made my application in writing; and as they were about to close the meeting—the usual way was, they would call in property owners there in regard to their applications, and what they would do in regard to their business. I noticed everybody was called in but myself. I was waiting around all day, and I heard they were about to adjourn; they had about got through with their business, and I knocked for admission. I was admitted, and I supposed that the Board was to purchase the trail, because an appropriation of \$25,000 had been made for that purpose. I was informed in the room, by the Chairman, that there was a motion before the Board to offer me \$700, and the motion was lost; and, furthermore he stated "the Board has concluded to let the saddle train business an exclusive right. Therefore your application is denied." I told the Board that that ruined the business of the trail, and I walked out of the room. There was nothing more done for that season. It was virtually ruined. About all I could get to go up the trail was those to go a foot. Tourists told me they couldn't get horses to make the trip.

Q. In other words, you were frozen out? A. Frozen out; frozen to death, as near as they could freeze me.

Q. Do I understand you to say that you were informed that they had concluded to make that saddle train business an exclusive right? A. That is what they told me; that the Board had concluded to let that an exclusive right—the parties that received that exclusive right; those parties are the only parties I have ever seen run saddle trains there since.

Q. Who were they? A. There were other parties there running saddle trains at the time. As long as there was a crowd of them there I generally had some one that would furnish horses for my route, because I could keep their saddles full.

Q. You say those are the same parties that run saddle trains to-day? A. No: there was Hamilton at that time—a man by the name of Hamilton. He had a trail there, and the next morning he told me that he was ordered to take his stock out of the valley. He was very ill at the time—at the point of death—and he died in a day or two after that. I never have seen any other saddle train since except parties that I was told they granted the exclusive right to.

Q. What became of your route, your trail? A. I held possession until they made an effort to take it from me. They declared it free; tore down my toll gates; interfered with the collection of toll. I came to the Legislature here and fought it out—got an appropriation that paid me for the trail.

Q. You were paid by the State? A. Yes, sir. I have had nothing to do with the valley since.

Q. You had to appeal to the Legislature? A. Yes, sir.

Q. A private claim? A. Yes, sir; that was nearly four years ago.

MR. GARDNER: Were there any of the present Commissioners on the Board at that time—at that time that you speak of? A. Mr. Mills; he

was Chairman at the time. It was him that told me that there had been a motion before the Board to offer me \$700—I think it was for my trail—but the motion was lost.

Q. What proportion did that bear to what, under the contract and under the agreement, you were entitled to, giving the 10 per cent decrease?

MR. GARDNER: Wasn't it \$900 they offered you? A. Oh, this was after that; a year after that. You see, from that time when that was voted down to offer me \$700, a year passed by; they told me they didn't wish to buy the trail; but they thought, as I had been to a good deal of expense—they asked me how the trail was paying. I told them it was a bill of expense; it had been from the day and hour that they granted the exclusive privilege to the saddle train; but I made up my mind that I would hold on to it as long as I could get a cracker to eat, and fight it out.

MR. TULLY: I asked you what proportion the amount that they—
A. I think it was at that time \$2,100, the unexpired valuation; \$2,100.

Q. And they offered to pay you \$700? A. Yes, sir; one year later it was \$1,800. That was the time they offered me \$900, provided I would give acknowledgment that it was a full, just, and honorable settlement of all the conditions of the lease. I wouldn't sign any such paper for \$900.

Q. If you would relinquish the difference between \$900 and \$1,800?
A. Yes, sir; that was just the difference; 50 per cent of the unexpired valuation. Of course, the indenture was their paper.

Q. That offer was made to you by the Commissioners? A. Yes, sir.

Q. They were the parties that made you that offer? A. Yes, sir; Jackson was Chairman at that time. Mr. Madden was one of what they used to call the old Board, but he was not on the Board at that time, as I remember it. It was since that. Just about the time the last appropriation was made; about the time that Madden was reappointed.

Q. Then, if you had accepted that proposition you would have lost just 50 per cent of your pay? A. Yes, sir; I was so sick and disgusted with it that I would have taken \$900 and given a receipt for \$900, but it occurred to me like this: the only object they could have in demanding what they did demand—an acknowledgment that it was a full, just, and honorable settlement—was that they intended to charge the State with the full amount by the indenture.

Q. You concluded it was an attempt to rob the State to the extent of the difference? A. That was my opinion, and I thought I would not accept it and give those terms. I was willing to take \$900 and give a receipt for \$900, and would have delivered up the property just the same as I did the day I was paid the appropriation, but I was determined that I never would sign any such acknowledgment for \$900.

Q. You would not put your hand to a lie? A. No, I would not. When they offered me the \$900 they didn't state the terms. I expostulated for some time. They said: "Well, you say your trail is of no value; it is a bill of expense to you." So I had, right there, during that very hour. They said: "Well, \$900 is better than no money." And I insisted that it was nothing but just and honorable that they should pay according to the terms of their own paper—the \$1,800. They said: "Well, we would not give any more. It is better for you to take that than take nothing." "Well, I suppose it is," says I; "if that is the best you will do, I will take \$900 in this way: if a man has got a pistol to his head, he has got to take about the best terms he can." "But," says they, "you will take the \$900?" I says, "Yes." There was not anything said for several minutes, and I rose up to leave the room and stepped towards the door and was called back and the terms then were made.

Q. That they would pay you \$900? A. The Chairman says: "If you take the \$900, Mr. Conway, you will be required to sign this acknowledgment that it is a full, just, and honorable settlement of all the conditions of your lease." I told them, "No;" and I walked out of the room. I told them I would not sign it for \$900.

Q. That would have left them in a position to show your receipt in full for the payment of the \$1,800 claim? A. Yes, sir; it struck me that that was the only object they demanded those terms, that they could charge the State with the \$1,800.

Q. They were discounting their own obligation—it looked like it, didn't it? A. Yes, sir; but, as I say, when I went into that valley that morning I would have taken \$500 and given a receipt for \$500; actually I would to have got the trail off my hands and let the people of the State of California get the benefit. But those conditions—it looked to me that the only object in those conditions was that.

Q. Looking at it from that standpoint, you considered it was not giving it to the State, but putting it in such a way that they could put it in their own pockets? A. Yes, sir.

Q. And that is why you refused to sign the paper? A. That is just the reason I refused to sign the acknowledgment. I have seen so much that I was perfectly satisfied that there could be no other object.

Q. Then the granting of that exclusive privilege destroyed your prospective profits in your road? A. Yes, sir; that trail would have brought me thousands of dollars. If I had been allowed to furnish saddle horses there, I would much rather have retained the property than for the State to take it at the unexpired valuation. It was a one-sided iron-clad instrument, the indenture. It reserved the right to take the trail at any time, at its unexpired valuation. Well, now, if the trail had been paying me \$1,000 a day, I could not have refused that unexpired valuation. I have a printed copy in my pocket, if you wish to see it; all its terms. Well, after I left the room and went out, perhaps a couple of hours afterwards, McCauley and Snow happened to arrive there. McCauley owned the Glacier Point trail and Snow owned the Nevada Falls trail. They asked me if the Commissioners had bought me out; I told them they knew what had occurred. "Well," says they, "they have got to buy you out, for they have agreed to buy us out," or had bought them out; something to that effect. At this time, I was building the road towards Raymond, that the stages are running on now, for the Enterprise Mining Company, and I had left a large gang of men there to go in. I was in a hurry to return there, and I had to return next morning. I supposed they would come to terms and would pay me a fair valuation for the trail. I thought the money had been appropriated. This was the second year, and it had been done the year before.

Q. I understand you to say that there had been an appropriation, and that they had the money? A. \$25,000 had been appropriated. Yes, sir; at the very time that the motion to pay me \$700 was made, the money was appropriated and lying in the treasury. The record will show that. Instead of coming to a settlement, the next morning, along a little after sunrise, I saw Hutchings, the Guardian, posting up notices around the valley, and I was asked by several acquaintances if they had paid me for the trail. I says, "No." "Well," says they, "the trails were all declared free." A few minutes after I saw Hutchings coming up to Barnard's, and he had a bundle of papers in his hand. I saw him tacking one upon the side of the door, and I went and looked at it, read it, and saw what it was. He went in to the desk. As he was coming out says I, "Well, Colonel, will you give

me one of them?" "Certainly, John," he said. I looked at it, and saw there was no date to it. I asked him if he would date it. He said, "Certainly." He walked back to the inkstand and dated it. I think it was the third of May, 1882, declaring all trails free. About an hour after that he came to me, and told me that he was ordered by the Board to inform me that the trail was declared free, and that I should remove my toll collector and collect no further toll. I ordered my collector to remain at his post. It was a day or two after that that there was a party going up, and Mr. Hutchings, the Guardian, interfered with the collection of toll. The gate was closed, and he tore it up. It was not locked—it was closed. He tore it down; at least, that was the evidence. Just as soon as I found my collector I told him to keep to his post until he saw me. Otherwise I told him to do his duty as well as he could, but not to use any violence or resistance; any violence; and he informed me what had occurred. I had the Guardian arrested for misdemeanor, and he was tried and convicted. The record shows it all. I do certainly think that they violated the lease most grossly—their own paper.

Q. Their own contracts? A. Yes, sir; at least there is all to show. I have always looked upon it in that light. I consider it a violation to refuse me the right to protect the business of the trail. The only reason they ever gave me that they withheld that right was that the Board had concluded to let the saddle train business an exclusive right.

Q. Your toll road then became a dead letter? A. It was a bill of expense on my hands from that on. The State paid me.

THE CHAIRMAN: Are you familiar with any of the other trails about the valley? You didn't build any of the others? A. The trails are all free. There is no toll trails in the valley at the present time.

MARK L. McCORD.

Being sworn by the Chairman, testified as follows:

THE CHAIRMAN: You are the present Guardian of the valley? Answer—Yes, sir.

Q. You are not a Commissioner? A. No, sir; I am not a Commissioner.

THE CHAIRMAN: We had just as well let Mr. McCord make his own statements.

THE WITNESS: As far as I am concerned I desire to be asked.

Q. "Misapplying of public moneys and appropriations?" A. I know nothing of that at all; I have seen no misappropriations in my term.

Q. "Destruction of public and private property in Yosemite Valley?" A. I know of no destruction of private property in the Yosemite Valley.

Q. Do you know of any destruction of public property? A. The public property that you say has been destroyed has been simply at the order of the Commission, upon their judgment whether it was buildings that should stand or should be taken down.

Q. As regards the destruction of private and public property in the Yosemite Valley; do you know of any destruction of private property? A. Not to my knowledge.

Q. Destruction of public property, if any? A. It was at the discretion or instruction of the Yosemite Commission.

Q. Do you know of any being destroyed? A. I know that several old buildings were torn down.

Q. What buildings were they? A. There was the Folsom building,

Black's building, and the Leidig building. The Folsom building was of no earthly use; neither was the Cook building; and the surroundings of the Cook building, and a portion of the surroundings of the Leidig building were of no earthly use. I testified before the Senate committee that the Leidig house proper could be made, by the expenditure of money, a good building, likely would be made fit for use.

Q. Was it destroyed, in the sense of destruction? A. No; it was not; it was used in other buildings. It was simply torn down and appropriated to other uses in the valley.

Q. As much of it as was available? A. Yes, sir.

Q. That was done by order of the Commission, as you understand it, in the exercise of their authority and discretion? A. Yes, sir.

Q. Do you consider it an unnecessary destruction of timber? A. No, sir; I do not. Their judgment was greater than mine, and I am simply carrying out their instructions.

Q. "Unnecessary destruction of timber in the Yosemite Valley?" A. Not in my time.

Q. You know of nothing of that kind? A. No, sir; my term begins, if you understand, from September, 1887.

Q. Do you know of your own knowledge of any having been destroyed prior to your becoming Guardian? A. Only from hearsay.

Q. In the sense of unnecessary destruction of timber? A. Only from hearsay, that was all; that is merely a matter of judgment of the different men that have been on the Board.

Q. "Clearing and plowing up valley meadow land?" A. The clearing, in my opinion, and also as Mr. Clark has stated to you, has not been enough; I see no cause why it should not go on and appropriations made, so as to make the valley as pretty as it is said to have been twenty-five or thirty years ago.

Q. That was when the Indians occupied it? A. Yes, sir; when the Indians burned it out every fall, as I understand through other parties.

Q. Plowing of the valley? A. There has been some plowing; perhaps less than ninety acres in the valley has been plowed.

Q. By whom? A. There have been about sixty acres plowed by Coffman & Kenney; about fifteen acres plowed by Mr. Cook and seeded to grass seed, so as to make it a beautiful plot.

Q. Has that been done by persons holding a lease and who had a right to it? A. Yes, sir.

Q. "Debarring the general public from joint and legal use of the valley." A. In what way?

Q. Well, that is the nature of the question. I apprehend, however, it means obstruction to their free ingress and egress to the different parts of the valley? A. I will answer that question this way: In my opinion they have free access to the valley for driving, to the extent of thirty miles, if not more.

Q. Over the roads of the valley? A. Over the roads of the valley, crossing and recrossing the valley in many directions; crossing over seven bridges across the main Merced River; that is, on the floor of the valley, there is a drive way all around that; then as to the foot passing, there are seven turnstiles besides other gates that allow people to pass out and in through the different meadows, as they wish; and the inclosures run along parallel with the river, and people cannot cross the river at those points without coming to the bridges; and, therefore, I say the fence does not obstruct, to any great extent, foot passengers or people wishing to walk.

Q. Are these turnstiles so arranged that they bring the parties nearly in

the neighborhood of those bridges? A. They terminate at the bridges generally.

Q. That is the only obstruction, those fences there, provided that those turnstiles and bridges across the river are the only obstructions—that is, the fences are the only obstruction to the free use of the valley—free access to all its different parts? A. Yes, sir.

Q. By whom was that fencing done, and who controlled it? A. I suppose Mr. Hutchings did as much as any of them.

Q. Who controls it at present? A. It is under the different leases, and at the authority of the Commissioners.

Q. In other words, the persons lease those lands from the Commissioners? A. Yes, sir.

Q. Who are those persons? A. Coffman & Kenney and Mr. Cook; the State pastures are also inclosed. I believe that covers all—and Mr. Barnard.

Q. Do you consider those fences, those inclosures there, in their present condition, or at any time since you have been there—do you consider that they are an obstruction, debarring the general public from the joint and legal use of the valley? A. No, sir; I do not; I think they have free access. When they go into a turnstile they can go anywhere over a field that they wish, and come out on the other side; they can cross through and have free use of the field. I don't know as a person would like, or would care to cut diagonally across those fields, because they couldn't cross the river if they did; I mean opposite to where the turnstiles take them, and the paths.

Q. "Holding annual meeting with closed doors, in violation of State laws." A. Never to my knowledge have they done so but only once, I understand. I heard of it being done once at the church. That is from hearsay, and I give that as no testimony.

Q. Of your own knowledge you don't know anything of that kind? A. No, sir; nothing of the kind since I have been Guardian of Yosemite Valley.

Q. "Violating State law regarding the granting of exclusive privileges in the valley." A. I never have been asked that question before except at this present time. That, in my opinion, is, to a certain extent, necessary. It seems to me that they could not grant to more than one man a privilege of doing business. For instance, taking the blacksmith business. It barely pays one man, and in fact, it doesn't average him wages the year round. It barely pays him for the five or six months that he is in the valley; and if one or two more blacksmith shops should come in the valley, it would either create a blackmailing system, and he would have to buy those parties off, or else leave the valley, and let some one else take it. And it is the same way with the butcher business. That is carried on by one man. If several different parties had that, why, there would be no use of doing business there. They couldn't make a living. The different parties would object to purchasing from them, because they couldn't keep meats; they wouldn't kill enough to keep meat on hand. And you might go on and state in regard to saddle train privileges. I have heard—I don't say it from my own knowledge—but it has been said time and again, that different parties having saddle trains in opposition, that they took parties to different places free; and running opposition, they have often taken 25 cents. A man was harrassed to death by these opposition lines. And then they would take them free to different points, and likely, leave him there and go back, and wouldn't take the man back unless he would pay full price

for it. That is why I claim that the exclusive privilege should be granted to a certain extent.

Q. They would get him in the door? A. Yes, sir; they have done it; at least I understand so. It would only give a chance for buying off.

Q. A chance for blackmailing? A. Yes, sir.

Q. I understand that you give it as your judgment that it is necessary, in order to secure blacksmiths, and butchers, and other necessary persons there in the line of business, that it is necessary to restrict them by some provisions in their contracts or otherwise, and that after having secured what was deemed necessary for the accommodation of the valley, that you don't consider it conducive to the general interests of that valley or the public to grant privileges to others? A. No, sir; I do not. And I will state here that the saddle train business last year, to my knowledge—they state that other people would stay there and would take and do the business. Now Mr. Stegeman, who has made application time and again, as Mr. Clark knows, for saddle train privileges, had it offered to him last year; he had eight or ten horses that he had gathered up, and it was offered to him to go ahead and do the business after the time had expired of the saddle train company, and there was an order given him for ten horses. I believe he had three horses, and couldn't get the others—couldn't catch them—and there was a general muss up. That is the way it would be if it was open to competition; at the latter end of the time they would all leave, because there is not any money in keeping horses in the valley.

Q. You think it is absolutely necessary? A. I think so, to a certain extent.

Q. To restrict the number of individuals to whom those privileges shall be granted? A. Yes, sir.

Q. And I understand that you give it as the motive of the Commissioners to prevent the contingency arising of finding the valley at some time destitute of those necessary conveniences that would be likely to be brought about if there was no restriction? A. Yes, sir; these people are compelled to be there so many months in the year, so as to protect and give to the traveling public what they demand.

Q. Those privileges have usually been designated by the Commissioners as single privileges? A. Yes, sir.

Q. They are designated here as exclusive privileges; is it not a fact that they operate as an exclusive privilege? A. Well, you may say that to a certain extent. The word single is offered as a substitute for the word exclusive. You understand why that word is taken in that way.

Q. "Reduction of rentals to the prejudice of the State's income." A. Well, there is a difference of opinion. I think, in my opinion—of course, I can't say—the authority is greater than I am, that created me; but it is as Mr. Clark says—in my opinion, I would think that it would be to the advantage of the State, if those privileges were reduced to a nominal rent; but that has not been decided upon. I think in a few years it will be that way. I think the tendency is to draw it to that conclusion, whenever the State will give it appropriations enough to carry on that work.

Q. Taking the facts connected with them into consideration, state whether or not any reductions that you may have known to be made, whether those reductions were to the prejudice of the State's income? A. The only reduction that I know of that has been made—there were two reductions: one was to Mr. Robinson, from \$20 to \$1, at Mr. Thomas Hill's suggestion to me and from me to Mr. Goucher; and the other reduction was made to the saddle train company, because of a loss; they lost several hundreds of

dollars in the building, in grains and implements and things, and they thought as long as they had lost that, they would make this reduction, as they had asked it on that ground.

Q. Your understanding is that the reductions were made in view of the fact that these men had sustained those losses and that the interests of the valley required that they should let up on them? A. I don't know that you would take this case, particularly. The income from the valley is not sufficient to carry on the work of the valley, by any means. If we had to depend altogether on the income we couldn't repair the trails and keep the roads in proper repair.

THE CHAIRMAN: Was that loss that these parties sustained, private property? A. It was grain, and implements they used for farming, and hay and barley that they had for feed; that is, barley, not hay; barley seed, grain, and chopped feed; they had a storehouse and this fire took place and destroyed it.

Q. The buildings were private property? A. No; the buildings were State property. It was an old log cabin, and old log building.

MR. TULLY: "Failure to recognize their own contracts." Do you know of any instance in which they have failed to recognize or comply with their contracts? A. I do not.

Q. Of your own knowledge? A. I do not.

Q. "Withholding from citizens facts concerning the acceptance of the Stoneman House, and illegally leasing the same?" A. I don't know anything of that. That was at the time that I was appointed Guardian, and of course I knew nothing of the Yosemite Valley. I was just dropped into the Yosemite Valley as a perfect stranger to all its workings.

Q. "Rendering useless the district school of Yosemite Valley?" A. That is still going on, and the teacher is hired to go ahead and begin on the first of April.

Q. Do you know of any transaction in the valley the effect of which would be to tend to the breaking up of that school? A. No, sir; you might say, as it has been alleged, the driving of Harris out, because he had quite a large family of children, and a better offer was made for the Royal Arch farm than he made, that he was driven out. That would have the effect of reducing the number of children in the valley; and also Leidig's selling out.

Q. It would injure the school to the extent of losing that number of children, if it were an injury? A. Yes, sir.

Q. Mr. Harris left there; was he ejected or forcibly driven out of that valley? A. He was not ejected, and he was not forcibly driven out. He simply, by competition of bids, gave up the place. Harris states that he was driven out for feeding hungry men, but it has been proven that he had the place two years, two successive years after this action had taken place.

Q. Did he bid for the place that year? A. He bid for it that year, and he got it less the next year after the four men were there: he got it for \$450; he got it the next year for a less bid than had been offered; and his bid the third year was \$450, and the bid of the saddle train company was \$550, making a difference of \$100; and that was the forcible ejection of Harris, you might say.

Q. His failure to obtain the lease? A. His failure to give a higher bid.

THE CHAIRMAN: Do you know what that property is leased for now? A. The reduction was made in June in regard to that loss of the \$250; it was originally \$550, and it is to be paid \$300 for last year and next.

Q. The school there is drawing State money for its support? A. It

draws its regular money, as I understand, from the county; the regular tax. The Yosemite Commissioners have nothing to do with the school.

MR. TULLY: "Neglect of public roads and trails within the grant?" A. They have not been neglected during my time that I know of. Just as I came into the valley the lumber and timber that had been hauled in to build the new hotel cut up the roads fearfully; and as any man knows who has anything to do with road building, he knows that roads cannot be built up in the fall when there is nothing but dust to build with; and that, you might say, was a neglect of the road, because it was not profitable or would not be right to waste money upon throwing the dust into the road for the next team to splash it out. That would be the cutting up of the road, in my judgment; and during that fall I went to work while it was muddy, and in the spring and fall, and leveled these places, so that when the first stages came over it would pack and make a fair, decent road. The road is better now than it was when I went in, and I think that any one that will drive over the floor of the valley this spring will find the road in better condition than it has ever been in the Yosemite Valley.

Q. You think it would have been an injudicious expenditure of money to repair those roads at that particular time? A. It would have been; yes, sir. That is why I didn't do it. I have gone over the trails every month, and I am continually asking the guides, men that are running on those roads every day, if they are in a bad condition, and in what way; and the moment they report to me anything wrong, I send men on those trails immediately, and I go over them as often as I possibly can, and see for myself. Of course, we have to prepare in the fall and spring for heavy rains. Any man knows that the trails running up those steep mountains will wash, and to a certain extent, we have to leave in logs that have been spoken of, so as to turn the water off the grade, to keep from washing those trails. If we did not, in a very few days a stream would ruin more than we could build in months; and we have to leave those in, because during the summer we have heavy thunder storms and heavy rainstorms that wash the roads every once in awhile.

Q. They are left there really as a necessary protection? A. They are, to a certain extent; some of them we take out; and when they get filled up—that is, they get deep from stepping over them—then we fill them up; when they get bad, I send men over them to do that, at the suggestion of the guides, who are running over the roads every day.

Q. "Employment of State labor upon work for private parties?" A. I know of none of that.

Q. Nothing at all? A. It has been stated, last year it was said, because my men decorated the hotel at Barnard's, it was said that the men were employed upon private work. Well, that was not true; because the men were paid by the man that they did the work for, and they did it off hours; they did it from five in the morning up to the time they had to go to work. It has been my attempt to get as much work as I possibly can, and it has been stated that I have been rather arbitrary in that, and tried to drive the men.

Q. It was their own time and they were paid by private individuals? A. Yes, sir.

Q. And not from State funds? A. And not from State funds.

Q. "Failure of the Board to properly manage the Yosemite Valley, in accordance with the conditions imposed upon the State by the United States." A. I think that is an unjust and false charge, in my opinion.

Q. Do you know in any instances in which anything has transpired in the management of that valley that would lead you to believe that they

were neglecting their duties or violating any of the conditions of the contract between the United States and the State of California? A. No, sir; not to my knowledge.

Q. No act of theirs that you consider, that you construe into being a violation? A. No, sir; I don't think the Board of Commissioners would do anything of that kind intentionally. It may be simply a misjudgment or a difference of opinion.

[Further hearing continued until to-morrow evening, February 13, 1889.]

WEDNESDAY EVENING, February 13, 1889.

FRED. LEIDIG.

Being sworn by the Chairman, testified as follows:

THE CHAIRMAN: Where is your place of residence? Answer—Los Angeles.

Q. You were for a long time a resident of Yosemite Valley? A. Yes, sir.

Q. You kept a hotel there? A. Yes, sir.

Q. You may state to the committee the circumstances under which you kept the hotel—all the circumstances about it, as concisely as you can, to the reporter, who will take it down? A. Well, I first went to the Yosemite Valley in the year 1866; leased premises known as Black's hotel; kept them for four years. The old Board of Commissioners leased the premises to me when I was ready to buy them, but they made the statement to me that Black had no rights there, so they would lease me the property. They leased me the property and Mr. Black ejected me, using the California term, by shotgun rule; and Henry H. Haight then became President of the Board of Yosemite Commissioners. Mr. Galen Clark happened to be in the valley that same evening, or came in; so he wrote the circumstances down to the Commissioners. Governor Haight wrote up a letter that they probably had done wrong in leasing me those premises, and that I should select a piece of ground and build on it and improve it. That is the way that I came to build a house; that is the way that I went to the Yosemite.

Q. How long did you remain there? A. Well, I remained there altogether twenty-two seasons; that is, you might call it twenty-two years. I moved out in the winter times; that is, the winter of 1866 and 1867. In 1868 I remained in the valley; from 1868 until I left, last April.

Q. Go on and give the committee a history of your connection with the hotel business there, as concisely as you can? A. Well, I don't know hardly how to get at it at all, to make the committee understand thoroughly. I would answer any questions that you have to ask, or answer them to the best of my knowledge and ability.

Q. We have no questions given us to ask you. We want your testimony particularly respecting your eviction and the destruction of the hotel in the valley? A. When I quit the valley I had two reasons for quitting the valley. One was that I couldn't compete with the Stoneman House, and the second was that the Commissioners refused to give—not me—my wife was the business manager, or had the lease. The Commissioners refused to give a five years' lease, and we came to the conclusion that we stood no show at all in the matter.

Q. Did you make application to the Commissioners for a lease, Mr. Leidig? A. Yes, sir.

Q. A written application? A. Yes, sir.

Q. That was refused you? A. They refused it on the conditions that because they had committed one wrong, that they didn't think they would be justifiable in committing another. They were willing to give me a permit from year to year; they never refused me a permit from year to year, but they refused to give me a five years' lease.

Q. State to the committee what wrong you conceived they had done you? A. Well, that is about all the wrong they did me in that respect. After I left, of course—I left my two boys in possession of the premises, and they have now torn all the premises down, and used the lumber to make improvements for other people in the valley.

Q. In what year did you leave the valley? A. I left last April, 1888; twenty-fifth day of April.

Q. Was that application for a lease made to the present Commissioners who are now on the Board? A. Well, not all the present Commissioners, because there has been some new ones appointed; there were some new ones appointed last April; two only, I think; one was Truman, and I think the other was Taber.

Q. In what way do you consider the Commissioners threw obstacles in your way to keep a hotel there? A. Well, I don't know that they threw any obstacles in my way whatever, as regards keeping a hotel. If I had received a five years' lease, I could have made improvements to have justified me to have stayed, so that I could have probably competed with the other hotel more. At one time there, the Commissioners served a notice on Mrs. Leidig that if she went into a pool with the other hotels, that she was liable to forfeit her lease; so she didn't go into the pool with them.

Q. What pool was in contemplation? A. Well, the pool was, that the three hotels were to charge a uniform price, which was \$4 a day.

Q. What price were you charging per day at that time, Mr. Leidig? A. Well, of course, that year I charged all the way from \$2 50 to \$3 a day.

Q. Did you have a fair show with the balance of the hotels, with the passengers? A. Yes, sir; I got lots of passengers that summer.

Q. No effort was made to keep them away from your house at all? A. Well, they drove the stages by me about two weeks, or three, probably—drove them on the other side of the river; they called it boycotting. But in a great many instances, after doing that, they were compelled to drive their stages—even after driving around a mile and a half or two miles out of the way—they were obliged to bring the parties to Leidig's hotel; at all events, parties had telegraphed me for rooms and accommodations; so they were obliged to drive them down anyway. I made complaint to the Commissioners about it, because in their rules and regulations it is laid down; they asserted that the stages should stop, as they drove into the valley, in rotation, and stop long enough to give persons a chance to decide what hotel they would stop at; but there was no attention paid to it at all. The stage drivers told the passengers that there was a bridge broken down, in some instances, and there was a big tree across the road in the other; but when the stages left the valley there was no bridge broken down nor no tree across, but it was only coming in that these things happened.

Q. Whose stages were they? A. Washburn's; and the other stages the same way; the other stages, though, done it later in the season.

Q. Do you consider your business was injured by the fact of their driving stages across the river away from you? A. It was only for a short time.

Q. About how long a time? A. Oh, probably two weeks or so. I didn't consider that my business was injured, however, as bad as the stage com-

pany's business. They were in the wrong, and of course, tourists complained about being driven out of the way two miles, and they quit it of their own free accord and will.

MR. TULLOCH: When do you say you built the hotel? A. Well, I built the hotel that I occupied latterly, in 1869 and 1870. I first occupied it in 1870.

Q. Did you build it yourself? A. Yes, sir.

Q. When were you evicted? A. Well, I was not evicted.

Q. When were you boycotted? A. Well, that was in—I guess it was 1886, or it might have been 1887.

Q. Did you receive any consideration for that hotel? A. No, sir; never got a quarter of a dollar, and it never cost the State a quarter of a dollar.

Q. You were then in a manner compelled to leave, were you, by the reason of commercial losses? A. No. I won't say I was compelled to leave. I sold out the business and furniture. I sold it to Cook and Barnard for a consideration, and signed an agreement with them that I would not do business in the Yosemite Valley for ten years.

Q. But before you sold hadn't your business been injured to such an extent that you didn't desire to remain longer? A. Well, I didn't desire to remain longer unless I could get a five years lease so I could put some more improvements; some cottages or something.

Q. Did you make application for a lease? A. Yes, sir.

Q. Was it denied you? A. Yes, sir.

Q. Was there a time when your house was broken open, when you left parties to attend to it, in charge of it, when it was broken open? A. The Guardian, Mr. McCord, broke it open with a crowbar.

Q. Under what conditions? A. Well, he had orders, as I understand, from the executive committee of the Commission to manage the Yosemite Valley, to take possession of the house. The house was all locked and barred up. I left my two boys there in charge. One was twenty years of age and the other is fourteen.

Q. At that time had you turned over the house to those parties or not? A. To the Commissioners?

Q. Yes? A. No.

Q. You had not? A. No, sir; they didn't ask me for possession of the premises at all.

THE CHAIRMAN: Did you ever ask them to give you any compensation for the property? A. Well, I made a statement to them that they should do it, and some of them said yes; I ought to have it. I never put in a writing; it was merely verbal, and never at their meeting; it was only talking to one or the other of them. I never did it in meeting to them.

MR. CRAWFORD: Was it understood that the buildings being put up there by you and other parties were after a time to come under the control of the Commissioners of the valley? A. Well, it was so stated with other buildings, but in this building I think it was entirely different, because the Commissioners invited me to put it up; I didn't go and ask permission of them at all, they invited me to put the building up, after having leased the Black premises to me; there never was any statement made.

Q. With the understanding it was to be your private property? A. No; there was no understanding about it; they gave me leave to put up the premises with a rental of \$120 a year to be paid for by improvements; that was the wording of it.

Q. In other words, you were to put up the improvements? A. I was to put up the improvements.

Q. And to give those improvements at the rate of \$125 a month? A. \$120 a year; that was the understanding, and the lease read so.

Q. How many years did you say you did business there? A. In Yosemite Valley?

Q. Yes? A. Twenty-two years.

Q. In that building? A. Not in that building.

Q. That building that was torn down? A. Eighteen years in that building.

Q. What was the value of that building? A. Well, of course the lumber was all whip-sawed, if anybody knows what whip-sawing is, it is pretty expensive work; and things were very high. There was nothing but a trail into the valley. My nails cost me, in Mariposa, 10 cents a pound, and 5 cents a pound to have them carried into the Yosemite; and everything else in proportion; so that I suppose that the actual value of the large house cost me between \$5,000 and \$6,000. Then, afterwards, I built, I don't know how many cottages around there. And of course lumber is cheaper; after I could get lumber from a sawmill, it didn't cost me one tenth part as much as it did to whip-saw the lumber for the main house. The house was the best constructed house that there was in the Yosemite Valley, except the Stoneman House.

Q. Did you ever have any settlement in relation to the buildings you had put up, and the rent? A. No, sir.

Q. There never was anything said about it after you began building there? A. No, sir; I paid rent for the past two seasons that I did business there. The Commissioners did a lot of improvements there, but I paid for them. They put new porches down; new flooring on the porches; and I paid for it, and Senator Goucher has the receipt to-day, to show that I did pay for it.

MR. GARDNER: Did you ever make any demand on the Commissioners for a settlement? A. No, sir.

MR. CRAWFORD: You were satisfied, and I suppose they were too, during the time? A. Well, I was satisfied as long as the Commissioners didn't bother me for rent. This present Board of Commissioners contended that I didn't pay any rent for eight years. Well, I was content when they didn't ask me for it, and it seems that they were content not to ask me until the last two years.

MR. TULLOCH: Did you feel very contented about the time that they refused you a lease of the premises? A. No, sir; I did not.

Q. Didn't you think they had acted unjustly by you in the matter? A. Well, I thought they were not acting justly.

Q. Then you did not feel very contented about it? A. No; they gave one party a lease. They had it in their laws that they would only give permits for one year, but they gave another party a permit or a lease for five years, and I considered that if one party had the right to that, others have.

MR. CRAWFORD: You couldn't afford to go on and make improvements for a one year's lease? A. For a one year's lease, or a permit, rather. I had made all the improvements that ever were made.

THE CHAIRMAN: What was the name of the party that received the five years' lease at the time they refused you? A. That got the lease?

Q. Yes? A. Coffman & Kenney.

Q. For a hotel? A. No, sir; for a livery business.

MR. CRAWFORD: Did they pay the same rent that you pay or a higher rent? A. Theirs was an entirely different business. Mine was a hotel business, and theirs was a livery business.

Q. They had no connection? A. No, sir. They had it in their laws

that as the leases expired they would only give permits from year to year. Coffman & Kenney's lease, I believe, had expired, but they turned around and gave them a lease for five years and ignored every person else.

MR. TULLOCH: Then you practically lost many years of your service and work there? A. Sir?

Q. That amounted to practically losing your many years service and life of work in the valley? A. Yes, sir; of course it is natural that when they destroyed the property that they took my home. Of course, I went down to Los Angeles with the expectation of probably bettering myself in different respects. I thought it was a duty I owed to my family that I should take my children out, because there was some of them that never had been out of the valley; some of them had been as far as Mariposa; and I considered that if I didn't like it down in Los Angeles, that I still had a house, a home to go to, and that I might have gone back to the Yosemite Valley. I didn't consider that myself or wife ever had committed any crime that we would ever have to leave there anyway, if we couldn't do business.

MR. GARDNER: Did the hotel business pay pretty well? A. It did at times. Of course the hotel business—a great many people have an idea that the hotel business in the Yosemite Valley is a big, fat business. but it is not as big as people imagine, because you only do business about half the year; well, it is not half the year that you do business.

Q. You didn't entirely lose your time, and waste your life altogether? A. No.

MR. TULLOCH: Do you know anything about misapplying public moneys and appropriations? A. I do not.

Q. Anything about the destruction of public and private property in Yosemite Valley? A. Well, that is the only thing I know of, that they destroyed my premises there.

Q. You have no knowledge of any other destruction? A. No, sir.

Q. You do know they destroyed yours? A. Well, I don't know. I was not present. What I know of my boy told me what they did.

Q. "Unnecessary destruction of timber in the valley?" A. Well, I think there has been a few trees cut there that should not have been cut. I think there is a great deal more that ought to be cut really, in the way of small pine trees.

Q. "Clearing and plowing of valley meadow land?" A. Well, I couldn't tell you. There has been a heap of plowing done I believe since I have come out. I don't know it to be a fact, only what I have heard.

MR. CRAWFORD: How long since you left the valley? A. Last April.

MR. TULLOCH: Was there much plowing and clearing of land before you came out? A. Well, there was the Harris ranch and about twenty acres that was rented in connection with the Stoneman House, that was plowed, and there was a great deal under fence that was not plowed; not at that time.

MR. CRAWFORD: Used for pasture, I suppose? A. Yes, sir; of course I have never measured it; I suppose there was probably five hundred acres under fence used for pasture and farming purposes. There may be more or less, but I would judge about five hundred acres.

Q. What kind of a fence is it fenced with? A. Principally barbed wire.

Q. Are there gates in those fences, so that people can go around over the valley at their pleasure? A. There are no gates that I know of where the barbed wire fences are at all. The barbed wire fences are principally along the road where they have their driveway.

Q. On both sides? A. Yes, sir; I don't know of any other place; at

least, not when I left the Yosemite Valley, that there was a barbed wire fence on each side of the road, because the roads are so constructed that they are constructed on the high ground; that they didn't interfere with the meadow lands at all. I don't know of an instance where there was a barbed wire fence, or above the upper and lower side of the road, as you may term it.

Q. There is a portion of the valley that is not fenced and set apart for campers, isn't there? A. I don't know. They were talking about setting a place apart, where my premises were, this summer. Whether they did it or not I never made any inquiry.

Q. Were there no places of the kind when you were there? A. There used to be a place up at Harris' ranch.

Q. A place that was set apart for campers? A. Yes, sir.

Q. You don't know whether that is open to campers yet or not? A. I do not.

MR. TULLOCH: How long ago did they set that place apart? A. For campers?

Q. Yes, sir? A. They set it apart ten or twelve years ago.

Q. How large was the spot? A. Well, I should suppose there was fifty acres.

Q. Do you know whether or not it is used for the same purpose to-day? A. I don't know.

Q. Is it or is it not under fence? A. Well, it was not under fence then. It may be now; I couldn't say. If I understand it right, I think that Coffman & Kenney have barns or something built there. I don't know. They have built two bridges since I left the valley, but where I don't know exactly.

Q. "Debarring the general public from joint and legal use of the valley?" A. Well, I think if there was no fences at all in the Yosemite Valley that the public would have better use of it.

MR. CRAWFORD: These fences were an obstruction to tourists, were they not, in going around over the valley? A. Well, they certainly are; because people, ladies especially, cannot climb a barbed wire fence. If they want to go from one point to another it makes it very inconvenient for them.

Q. Do these roads you speak of run around the edges of the valley, or through the meadows? A. They run around the edges principally; yes, sir.

Q. Then the fencing is in the center of the valley, as you may say? A. Mostly.

Q. And roads on each side? A. On each side, close to the bluff.

Q. It is not likely that a sightseer would want to go out into those meadows, is it? A. Before these wire fences were put up, I know that parties, especially when the river became so that people could ford it—you could go from one point to another in half the distance that it takes you to go now; it was much more convenient. You take it there in the middle of July, you can ford the river in almost any place; for instance, a party wanted to go across to Yosemite Fall, they could do it in half or three quarters of a mile; now it would take a mile and a half or two miles.

MR. TULLOCH: Well, you don't think then, as a matter of sound policy, do you, or do you not—you don't think it was a matter of sound policy to inclose the land? A. Well, no; I don't think it was good policy; not so much of it. I think that the saddle train and carriage company ought to have a pasture to turn horses in, if they are unwell or unfit to work; if a horse gets a sore back or something or another, I think it is a very good idea that they should have a place.

Q. "Holding annual meetings with closed doors, in violation of State law." A. Well, I have not attended but very few of their meetings in Yosemite Valley: when I did attend one, I never saw any doors closed.

Q. Do you know of any being closed? A. Well, I have heard so, but I couldn't make the statement, so far as my own personal knowledge goes.

Q. "Violation of State law regarding the granting of exclusive privileges in the valley." A. Well, they say that Coffman & Kenney have an exclusive right in the saddle train and carriage business; whether they have or not, I don't know. Mr. Clark has the privilege of running a carriage, and had the privilege of running saddle horses; he has utilized one but never has the other.

Q. How long ago is that? A. That has been three years ago.

Q. Do you know of any such privilege existing now? A. Well, Clark has the same privilege yet, to run a carriage or two carriages, if he wants to.

Q. Has he any means of doing so if he chose? A. No, sir.

THE CHAIRMAN: Does he pay anything to the Commissioners for that privilege? A. He pays \$50.

Q. A year? A. Yes, sir; to run one two-horse carriage; that is all he runs.

MR. TULLOCH: Do you know of any other parties who would like to get like privileges there, if they had the opportunity? A. Well, I have heard a great many people say they had made application to run a saddle train. Mr. Stegeman, I believe, wanted to run a saddle train; he was in the saddle train business once, and they bought him out, and I believe he made application again but was refused. I am only giving you that as a statement that is hearsay; not that I know positively.

Q. "Reduction of rentals to the prejudice of the State's income." A. Well, I don't know nothing about this only what I saw in the papers, that the Harris ranch was leased to Coffman & Kenney for \$500 or \$550, and now at the present time they are paying \$250; whether that was correct or not, I couldn't say.

Q. You don't know of your own knowledge? A. No, sir.

Q. Outside of that do you know of any reduction of rentals? A. No. Well, I know that Barnard's rent was reduced some years ago, from \$1,000 to \$750 a year.

Q. When was that? A. I can't tell you exactly how many years ago; it was seven or eight years ago.

Q. Do you know why it was reduced? A. Well, I couldn't say, only Mr. Barnard complained that he was paying too much rent for the business that he did in Yosemite.

Q. Has his business increased or decreased since then? A. Well, I think the business has increased.

Q. But still there was a reduction? A. Yes, sir.

Q. "Failure to recognize their own contracts." A. That is, the Commissioners?

Q. Yes? A. That I couldn't answer.

Q. "Withholding from citizens facts concerning the acceptance of the Stoneman House, and illegally leasing the same." A. That I don't know anything about.

Q. "Rendering useless the district school of Yosemite Valley?" A. Well, I have been told that since I went out of the valley—and Mr. Harris going out previous to my going—that it has broken up the school in the Yosemite Valley, because there are not children enough there to support a school—a public school.

MR. CRAWFORD: That was not the fault of the Commissioners, was it?
A. No.

MR. GARDNER: Isn't the school still going on, and has been right along?
A. The school-marm didn't teach her term out, quite, and I saw her a short time ago in Los Angeles; and she told me they would not have a school there at all, because there was not the required number of children to establish a public school.

MR. TULLOCH: Then your going away, your children going away, and Harris', had something to do with the stopping of the school? A. Well, we would naturally suppose so.

Q. No other children there? A. Mr. Kenney has six children and Barnard has two; I don't know how many of Kenney's are old enough to go to school: probably three or four.

Q. "Neglect of public roads and trails within the grant." A. Well, the trails and roads, while I lived there, were kept in ordinary good repair.

Q. "Employment of State labor upon work for private parties." A. That I know nothing about.

Q. "Failure of the Board to properly manage the Yosemite Valley in accordance with the conditions imposed upon the State by the United States?" A. Well, I couldn't define that to you. I couldn't define to you what the duties of the Yosemite Commission are.

Q. In your judgment have they faithfully discharged their duty towards the public? A. As far as I know they have.

THE CHAIRMAN: Did you ever hear any complaints from any tourists against the Commissioners? A. I never did.

MR. TULLOCH: You have heard no complaints about their granting exclusive privileges? A. From the tourists?

Q. Yes? A. There never was any complaint made to me.

I. CHOYNSKI.

Being sworn by the Chairman, testified as follows: •

THE CHAIRMAN: Where is your place of residence? Answer—San Francisco.

Q. You have been a resident of Yosemite Valley? A. No, sir.

Q. Never have been? A. No; never have been a resident of Yosemite Valley.

Q. State to the committee, as concisely as you can, what you know of the circumstances concerning the leasing of the Stoneman House in the valley? A. I inquired of Commissioners Griffith and Madden, in the early part of June, 1887, the conditions upon which the Stoneman House could be leased when finished. They told me that it would be advertised in due time in the newspapers. I scanned the newspapers from that time on until within a day or two, when the time was set that the Commissioners should meet; then I happened to discover an advertisement in the "Bulletin," the only paper in which it appeared. I made my application in conformity with the advertisement. The Commissioners were to decide upon leasing the hotel the following morning. When the bidders called, we were requested to withdraw our bids, and other specifications were submitted to us upon which we were to make new bids. The specifications contained conditions which were not advertised: some conditions that but one bidder had asked for, that none of the others had asked or mentioned: and it enjoined the bidders from asking any restriction regarding the stages, or

any compulsion of the stages stopping at the new hotel. The Commissioners desired the bidders explicitly to understand that they would not interfere with the stages; they could stop at the hotel or not; that the Commissioners had no jurisdiction over the stages. They reduced the rent from the amounts that we had bid down to the lowest amount; they reduced it to the amount of the lowest bidder. I had offered \$3,000 more than the lowest bidder for the rent of the hotel alone, exclusive of the additional pay for privileges, which we were not asked to bid on according to the advertisement; other bidders had offered more than I did; Tyack had offered more, and Judge Grant had offered more than Tyack. The conditions contained in the second specifications included privileges for the sale of milk, butter, eggs, and merchandise, which was equal to keeping a store in conjunction with the hotel. This was a clause that but one bidder had asked—one condition—and the entire specification appeared to any of the bidders as though it had been dictated by the one bidder. Every condition asked by the one was included therein, and conditions asked by others were particularly excluded.

Q. Will you state the name of that bidder? A. Mr. Cook. The specifications appeared as though they were intended for Mr. Cook only and for no one else.

MR. CRAWFORD: He got the hotel? A. Indeed he did; and the conditions referring to the stables were such that only Mr. Cook could get the hotel, and that no one else could keep it. It was evident that if Mr. Cook would take the Stoneman House Cook's hotel would be closed, and the stages would run to the Stoneman House; while if any one else was to obtain it, it was a sort of caution by the Commissioners to let the bidders know that they couldn't very well keep that hotel. If any one else should be the successful bidder, and the lease would be awarded to him, he would take his chances of not having that stage come near his hotel, and allow tourists to grope their way over a rocky road, or a mile and a half or two miles to the new hotel.

Q. Was Cook the proprietor of the stages also? A. Certainly, Cook asked me to buy him off after the first bids were opened. Mine appeared to be the most favorable one for the State.

THE CHAIRMAN: Had Cook a license or privilege to keep a hotel in the valley at this time? A. Oh, yes, he did.

Q. Was anything said by the Commissioners by which you inferred that they would give that privilege if you got the Stoneman House? A. His lease had not expired. The Commissioners asked me particularly—Commissioner Mills asked me whether I expected the Commissioners to close up the other hotels if I obtained the lease. I told him that I didn't know that they had the power, and if they did, I didn't expect them to do anything of the kind; that I would take care of my own business. The Commissioners asked me concerning my financial ability. I told them that I would spend as high as \$50,000 in fitting up that hotel and making necessary improvements; and I have given them, upon their inquiring, ample proof that I had the financial ability. Senator Goucher told the Commissioners, at the time, that he was reliably informed from the best authority that the money was at my command, and Senator Mills corroborated his statement, that he had the same information; but when the second specifications were submitted to us, I came to the conclusion that it was very risky business for any one to invest his money under those conditions.

Q. You and the other bidders were given to understand that if you got the hotel stages would not run to it? A. We were given to understand dis-

tinctly that the Commissioners would not control the stages; we were told so in plain language, and repeatedly.

Q. Leaving it optional with them whether they would run to your house or not? A. That is exactly the idea; that the Commissioners couldn't control the stages. Mr. Cook told me that he would not run the stages to the Stoneman House unless he got the hotel, or unless I would buy him out, and I told him that the Commissioners were able to control the stages within the valley; and he said on a previous occasion that an order had been issued to him and that he disregarded it.

Q. An order about running his stages? A. About running his stages.

Q. You spoke of Cook's wanting you to buy him out? A. Yes, sir; he wanted me to buy him off; he wanted me to give him \$6,000; from that time when he spoke to me—it was late in the afternoon—up until the following morning at nine o'clock; between those hours.

Q. That was after you got the contract? A. No; that was when the first bid was opened.

Q. To buy out his hotel, or his stage, or what were you buying? A. Buying the contents of his house, no matter what they were worth; he wouldn't even make his statement or give me an inventory of the value of the contents.

Q. Of his hotel? A. Of his hotel. I told him it was valueless to me; but he said he would guarantee that he would abstain from doing business in the valley thereafter, and that the stages should run to the Stoneman House. I told him then that I was willing to give him \$6,000, but I wanted the same guarantee from his partners in the stage company, so that I should not be assessed for a similar amount at any time thereafter by the other shareholders of the stage company.

Q. Was he willing to give you that guarantee? A. He said he couldn't do that, because he couldn't reach his parties; he could only do that for himself.

MR. TULLOCH: You spoke about the conditions being different in Cook's bid from those in your own and other parties' bids, and you spoke something about the conditions possibly being only known to Mr. Cook and to the Commissioners, you gentlemen having no knowledge of them. What makes you think that there was a knowledge between the two parties? A. In the original bid, the first bid that we put in, I made the bid in accordance with the advertisement by the Commissioners, offering \$15,000 for the rent of the hotel, and agreeing to pay for the use of the meadow land which was mentioned in the advertisement, which the advertisement read, at whatever the Commissioners would charge. I didn't ask anything about compelling the stages to run to the Stoneman House. I didn't mention that. I didn't ask for the privilege of selling merchandise, milk, butter, eggs, bread, or anything else. I was asked whether I would improve the grounds at my own expense, and keep them in good condition; and I told the Commissioners that was matter of fact; it was to my own interest. I was asked whether I would put in gas works at my own expense, and I told them that would be one of the first things that I would have to do; I told them even that if there was no range provided, I would build one, or if the one that the Commissioners had provided didn't suit me, I would build one at my own expense; that I would build a bake oven, no matter what the expense would be. And, under those circumstances, the Commissioners couldn't very well award the lease of the hotel to any one else, except to me, without stultifying themselves, or showing their hand openly, that they were in collusion, or show a preference to one as against the other.

Q. Then the conditions of the lease to Mr. Cook were not as favorable

as the proposition embodied in your own? A. His conditions, no; he offered less, and he asked certain privileges.

Q. Your own proposition would have been largely in favor of the State?

A. Most assuredly, and for that reason we were asked to withdraw our proposals.

Q. How much higher was your bid, monetarily, than Cook's? A. Upon the rent alone, about \$3,000, exclusive of all the privileges.

Q. And beside that, what you proposed to do, your conditions, and so forth, were still more favorable, were they, than the other conditions? A. There was no bid asked upon that; not on the first bid. Subsequently, we were asked not to bid upon the rent, simply upon the privileges; but the lease was for ten years; the rental was for ten years and the privileges but for one.

Q. You spoke about Mr. Cook having a lease at the time, did you not?

A. Yes, sir; he had a lease of the house.

Q. How long was that lease to run? A. That I don't know.

Q. Don't know how near it was up? A. No; that I don't know.

Q. Do you know anything about Leidig's hotel; about him not getting a lease? A. Only from what Leidig told me. At the time the Commissioners met; they held three meetings at that time; three consecutive days. That was in August, 1887.

Q. You don't know why the lease was denied to him and given to Cook, do you? A. Only from what I surmise, that Mr. Cook was the favored one.

Q. You don't know why a lease was denied unto Harris, and yet given unto Cook? A. Probably for the same reason that the lease was given to him for the Stoneman House in preference to any one else.

Q. Were there any evidences of collusion in the matter? A. Most assuredly; unmistakable evidences; and the evidence was apparent in the second specification, where every condition that Mr. Cook had asked for in his original bid was mentioned.

Q. Then those favors and partialities, in your mind, were discriminations, were they? A. Yes, sir.

Q. "Misapplying public moneys and appropriations?" A. Well, I believe in making improvements upon the Stoneman House which I had agreed to make at my own expense. I was asked particularly whether I would make those improvements at my own expense, and I agreed to do so.

THE CHAIRMAN: Those improvements were made by the State afterwards, by the Commissioners? A. I understand that the State is employing laborers now in improving the grounds of the Stoneman House, and I was asked whether I would do that at my expense, and I agreed to do so.

MR. GARDNER: Do you know these things of your own knowledge? Have you been there? A. No; I have not been there.

Q. You have just heard it? A. I come in contact with tourists and residents of the valley. I have kept a hotel for a number of years in San Francisco, and I have seen a great many tourists; have had people that were employed by me employed in the hotel in Yosemite Valley; originally in Cook's hotel, and subsequently in the Stoneman House; not in the same capacity. A man who occupied the position of fourth cook, or pastry cook, in my house, was chief cook up there.

Q. It is all hearsay to you? A. Yes, sir. If you elicit the fact from other witnesses that people are being employed at the expense of the State upon work which I have agreed to perform at my expense, then you will be satisfied that there is a misappropriation.

MR. TULLOCH: "The destruction of public and private property in the Yosemite Valley?" A. No, sir; I know nothing about that.

Q. "Unnecessary destruction of timber?" A. Nothing.

Q. "Clearing and plowing valley meadow land?" A. No.

Q. "Debarring the general public from joint and legal use of the valley?"

A. No.

Q. "Holding annual meeting with closed doors?" A. One part of the meeting, when they considered to whom to award the hotel, we were excluded.

Q. Who were excluded? A. All outsiders; all the bidders.

Q. Was Mr. Cook excluded? A. Mr. Cook was excluded.

Q. Do you know of any other occasions of exclusion of parties? A. Not of my own knowledge. I only attended those three meetings.

THE CHAIRMAN: These parties were excluded from that meeting while the bids were being considered? A. While the bids were being considered.

Q. While the bids were being opened? A. While the bids were being opened.

MR. TULLOCH: Were they admitted subsequently? A. Subsequently, in order to hear the verdict.

Q. "Violation of State laws regarding the granting of exclusive privileges?" A. I couldn't tell you anything about that.

Q. Do you know whether any exclusive privileges were granted; whether they were in violation of the laws? A. I don't know.

Q. "Reduction of rentals to the prejudice of the State's income?" A. In that one instance that I had offered so much more money. I was asked whether I would give sufficient bonds for the performance of my contracts, and I was prepared with the best bonds obtainable in San Francisco.

Q. "Failure to recognize their own contracts?" A. Well, they went back on their original advertisement; went back on their conditions.

Q. "Withholding from citizens facts concerning the acceptance of the Stoneman House, and illegally leasing the same?" A. Well, I don't know that the public ever was made aware of its acceptance, or when the lease was made out, or whether it ever was legally leased.

Q. What is your judgment in the matter? A. My judgment of the leasing of the hotel?

Q. Yes? A. That was a matter made up between the lessor and lessee; that they accepted it at their leisure, and whether the lease was executed is a matter of doubt. I don't know that.

Q. "Rendering useless the district school of Yosemite Valley." A. I don't know anything about that.

Q. "Neglect of public roads and trails." A. No.

Q. "Employment of State labor upon work for private parties." A. Possibly that may be, around the Stoneman House.

Q. Did you know that in the case of the Stoneman House? A. No; only from what I have learned since this investigation was commenced.

Q. "Failure of the Board to properly manage the Yosemite Valley in accordance with the conditions imposed upon the State by the United States." A. Well, that is a general complaint by the tourists, that it is improperly managed, and that it is detrimental to the best interests of the State, and depriving the people of the State of a very large annual revenue; that instead of facilitating travel and affording people ample accommodation, at least adequate to the present charge, the charges are extortionate and they repel tourists, and it deprives the people of this State of an annual income of no less than \$1,000,000 by which the people would be richer if the Yosemite Valley was properly managed.

MR. GARDNER: That is your opinion? A. That is the general opinion

of people that have traveled there. I entertain annually no less than from one to three hundred people that have visited the valley, from all parts of the world.

MR. TULLOCH: You have talked with them? A. Talked with them! Grievances have been laid before the Governor himself, and he promised to investigate them.

Q. You then think that if it was properly managed that a much larger revenue would accrue to the State, for one thing, and you think greater satisfaction would be given to the public? A. Most assuredly.

Q. Do you know anything about the charges of the Stoneman House? A. \$4 a day is the minimum; all extras are paid for extra.

Q. You would have charged that much should you have got the place? A. That is the rate fixed by the Commissioners. People don't complain about the charges, but they complain about the fare—that it is not worth what they charge.

THE CHAIRMAN: Are there any other circumstances not contained in these questions, that you know of, about the management of the valley by the Commission? A. People traveling in their own conveyances being charged exorbitant rates for toll; being deprived of comfort when they get there; campers finding a lack of accommodations; they are hampered in every way. And if the valley was properly managed the traffic to this State, on account of the valley, would treble; and every tourist, the calculation is, leaves in the State among the people from \$200 to \$300.

MR. TULLOCH: If one or two more hotels in addition to what is there could prosper, if they were there and had a low rent to pay, one good hotel in that valley, kept by a competent hotel man, could prosper and make a good deal of money, and it would be a benefit to the State? If in the same degree as the people of Mariposa County have voted \$75,000 to build a road to the valley, independent of this so called ring road—or the robbers' road, as the tourists call it—if a hotel were built by similar enterprise, by public spirited citizens or by the State, the value of the valley would enhance to the people of the State? A. Very largely.

MR. GARDNER: How long were you in the Yosemite Valley? A. I was not in the Yosemite Valley.

Q. How do you know the campers have not proper accommodations? A. I have been in the hotel business.

Q. Well, I have been in the hotel business, and I don't know it. A. You don't come in contact with the tourists.

Q. I come in contact with a great many of them. A. Of the tourists?

Q. Yes. A. Then they have told you different.

Q. They never told me anything about the campers; the people that go to hotels, don't generally go there to camp. A. Indeed they do. I have had people stop in my house, living there, boarders, that went up camping, not once, but several times.

Q. You don't know any of this of your own knowledge? A. Only from the corroborating evidence of several hundred people.

MR. TULLOCH: Then in your judgment the affairs of the valley have been improperly managed? A. Decidedly so.

Q. And it has therefore worked a detriment to the State's income? A. Yes, sir.

Q. And was not an administration of affairs, but a maladministration? A. That is the idea.

JAMES McCLELLAN.

Being asked by the Chairman, testified as follows:

THE CHAIRMAN: Where is your place of residence? Answer—Up in the Yosemite Grant, in the summer time, and in the winter time about seven miles from the valley below, that is my place of residence in the winter—in the summer time I am in the valley, or in the valley grant.

Q. Are you pretty familiar with the administration of affairs in the valley? A. Pretty well.

Q. Did you ever keep a hotel in the valley? A. Yes, sir; on the valley grant—not right in the valley, but in the valley grant.

Q. Whereabouts was that hotel? A. Well, take this room for instance, in the valley, mine was there about two hundred feet above, in the rim of the valley, on Glacier Point.

Q. Well, will you state to the committee now, all the circumstances, as near as you can, in regard to the attempt of the men to get you out of the valley—as it is called—of you call it a trap? A. They never tried to get me out of the valley.

Q. About trying to get you out of the valley? A. No.

Q. State any circumstances connected with your hotel that come to your mind? A. About my hotel?

Q. Yes? A. Well, I went into the valley there in 1871, and I built a crude path from the valley and opened up that point of interest, where a person could visit it in half a day going and coming, if necessary. I collected toll on it for seven years, and the State bought me out some five years ago, five or six years ago.

Q. That was the Glacier Peak trail? A. The Glacier Peak trail.

Q. The Commissioners bought out your trail? A. Yes, sir.

Q. Did they buy your hotel? A. No.

Q. You keep the hotel still? A. Yes, sir.

Q. Well, did you consider the compensation they gave you for the trail sufficient? A. Yes, sir.

Q. You were well satisfied with it? A. Yes, sir; I had to be, according to my terms of lease.

Q. No fault to find with the Commissioners in any respect; you think you were fairly treated? A. Yes, sir; I am treated very well.

Q. No fault to find with them? A. Well, I think it is very wrong for them to allow the valley to be fenced up with rails, and pickets and barbed wire, for the interest of private owners, I don't think that is right.

Q. Do you think that is a detriment to the public? A. I do. I think it is a great detriment to the travelling public, the public at large, as regards access, I have no personal animosity against the Commissioners, or no aim to grind any more than I think it is wrong for them to allow that valley to be fenced up and planned, and restricted for the interest of two or three private individuals.

Q. The word "trap" is mentioned here. What trap does that allude to, what is the nature of that trap? A. Well, it means—I don't know anything about the trap any more than what I have heard since I came to San Francisco. Well, I hear it talked of by the valley about Cook getting the hotel in preference to the gentleman who just went out, the gentleman who was in this seat before I sat down, and Mr. Grant and others offered more than Mr. Cook, and Cook getting the hotel in preference, I think it was very wrong, the Commissioners seem to be satisfied. I believe it would be better for the travelling public if there was free competition with every business there. I also believe a second class hotel for \$2 or \$2.50.

or \$3, would be better; I think it is necessary to have it. I deem it very necessary to have those fences pulled down, for the benefit of the traveling public.

Q. "Misapplying public moneys and appropriations." A. I don't know anything of my own personal knowledge about that, only that I heard Mr. Hutchings' testimony that there was a trail by the name of the Anderson trail; that there was \$7,000 spent on that by the executive committee, so I am informed.

MR. GARDNER: On the Anderson trail? A. On the Anderson trail.

Q. How much did Anderson get out of it? A. He got whatever he eat; not a quarter of a dollar; he told me himself.

Q. Who got the money? A. The men that worked there; he worked, and got nothing only what he eat; this was his own words.

Q. Well, do you know that it is a fact that they spent that money on that trail? A. I heard Dr. May say so last night in this room.

Q. Dr. May can tell us that himself, without giving it through you, I guess? A. Well, that is the only way that I know it; and also I have read the Commissioners' report, and it was several thousand dollars; I don't remember the number of thousands; that should be authority.

Q. Yes, sir, if they tell us so; but it is not authority coming from them to you and then from you to us? A. No; well, this is the only way that I could know it.

Q. Then you don't know it at all any more than I do? A. Any more than I don't know whether you ever read the Commissioners' report of that year or not; I think somewhere about 1882, I think it was.

Q. We can get that report if it is needed in evidence. A. That is where I got it.

MR. TULLOCH: Did Anderson tell you he had never received any money? A. Yes, sir.

Q. He told you that? A. He told me that.

Q. Did he tell you how long he had worked, or do you know how long he had worked? A. I don't; only what I heard in the other room.

Q. Do you know how long he had been working when he told you that, or how much work he had completed, or had he got through? A. No, sir; he never did get through; well, he got through work, but he didn't get through with the contract.

Q. When he said he had received no money for the work, how long a time did you think that comprehended; how long did you think he had been working, or do you know? A. I know he told me himself he spent the \$1,500 which he took the contract for. He had a contract to build a trail for \$1,500.

Q. He received \$1,500? A. No; the men got paid; he spent that with hired labor and expenses; that is what he told me himself; then Dr. Briggs, the Secretary of the Board of Commissioners, came up, and asked him: "Well, George, how is it?" "Well," said George, "there is nothing here for me, doctor."

MR. GARDNER: Was you present then? A. This is George's words; Mr. Anderson's own words to me afterwards.

THE CHAIRMAN: "Unnecessary destruction of timber in the Yosemite Valley." A. I know that J. M. Hutchings, several years ago—I don't know whether it is in the Yosemite Grant or not—the stage company were running opposition to the saddle train company, running horses into the valley, the passengers with horses, and I know that J. M. Hutchings went out to the mountain and blockaded the trails. I call that destruction.

Q. How did he blockade them? A. Felled trees across it; built fences.

Q. Did he do this of his own volition, or at the instance of the Commissioners? A. I understood, but not positive, that is, of my own knowledge, I understood it was by authority of the Commissioners.

MR. GARDNER: What was the trees laid across the road for? A. To stop Washburn and the stage company from bringing passengers into the valley by the upper end of the valley.

Q. He didn't want them to come that way? A. Didn't want them to come that way.

THE CHAIRMAN: "Clearing and plowing valley meadow land." A. Yes, sir; there is a good deal of the valley cultivated for the benefit of private individuals.

Q. How much land has been cleared and plowed up there? Make an approximate. You need not be exact with regard to it, but make some approximate? A. Well, I suppose there would be three or four hundred acres of land, altogether.

Q. Taking all that is plowed in the valley? A. Yes, sir.

Q. Is that land inclosed? A. Yes, sir.

Q. How is it inclosed? A. By a picket fence, rail fence, and barbed wire fence.

Q. Who plows up that land, sir? A. I believe Mr. Harris did. I think Mr. Cook plowed some of it—I am not positive of that—and the State plowed some.

Q. Do Kenney & Co. plow any of it? A. Yes, sir; Kenney & Coffman.

Q. What do they sow there, grain or grass? A. Grain.

Q. Kenney & Co., I understand, are the lessees of that land? A. Yes, sir.

Q. They hold a lease? A. Yes, sir.

Q. The next question here is: "Debarring the public from joint and legal use of the valley?" A. Well, that is on account of so many fences being on it.

Q. Do you think those fences operate as a barrier to the free access to the valley of persons and tourists, and persons coming to visit it? A. Yes, sir; I think it is really an imposition on the traveling public.

Q. You think it is a serious inconvenience to the public? A. I do, most decidedly.

Q. What is the character of those fences, are some of them wire? A. Yes, sir; wire, some of them.

Q. Are there any means of access or getting through those fences to the interior? A. I don't know of one gate; that is, I have never seen one gate through those barbed wire fences, unless going into Barnard's garden or field.

Q. Are there not some turnstiles there, in front of some of those bridges or passages? A. Yes, sir; there is some of them on the walk.

Q. How many of those are there, sir? A. I think it is two.

Q. That is all there is in all that amount of land that is fenced up? A. I think there is several other places going into Barnard's place; and there is another one going into the State pasture.

Q. You think that those fences are really an injury to the valley? A. I do, sir—to the traveling public.

Q. Looking at it from the standpoint of the fact that tourists when they come there want to go over the valley, and don't want to be disturbed? A. Most decidedly so.

Q. You think it is a serious injury to the valley? A. I do.

Q. "Holding annual meeting with closed doors, in violation of State law." Do you know of the Commissioners there ever having held their

annual meeting with closed doors? A. The first time that they had a meeting there, after Governor Stoneman was Governor, I heard Mr. Mills telling the Governor that they examined—took information, or something like that—and then held executive sessions.

Q. You know that of your own knowledge, or is it simply hearsay? A. Well, I know it of my own knowledge that they had the doors closed that meeting.

Q. You know that they did, on one occasion at least, hold a meeting with closed doors? A. But not since, that I am aware of.

Q. But on one occasion they did? A. Yes, sir.

Q. That was several years ago, or lately? A. That was several years ago.

Q. Who was Governor then? A. Stoneman.

Q. "Violation of State laws regarding the granting of exclusive privileges in the valley." Do you know of any exclusive privileges being granted to any persons to do business there? A. I don't know what you call it, whether an exclusive privilege or otherwise. I know that a man went in the valley with his own private carriage, and, I believe, stopped at Cook's, before the Stoneman House was built, and took a little walk up the valley, and found some acquaintances at Barnard's, and asked them to take a drive out to Mirror Lake; and the Guardian came out the next morning and forbid them to go with that carriage. Says he: "Here is a party that pays for the privilege of carrying you around."

Q. Who was that Guardian? A. J. M. Hutchings. This was a man by the name of Hutchings, in San Francisco.

Q. He told him that he had no right to drive his carriage? A. Had no right. And this man got up to the head of his dignity, and says: "You get in, ladies, and I will stand the consequences." And Hutchings run over the bridge. I didn't see this personally, but I know it to be true; I can bring witnesses to prove it.

Q. Do you know of the granting of any privileges in the shape of leases or anything, the natural result of which is to operate to exclude other people from the free use of the valley? A. Yes, sir.

Q. For any purposes? A. Yes, sir; Coffman & Kenney have got, I believe, the exclusive right, with the exception of one man, the privilege of running a two-horse vehicle there, and driving it himself.

Q. Others are not allowed? A. Others are not allowed.

Q. How do you know that others are not allowed, outside of this example that you gave us with regard to Hutchings? Is it general notoriety that others are not allowed to go in there? A. It is the general notoriety that no person is allowed to run in there, only this party.

Q. They are the parties who do all that business? A. Yes, sir.

Q. And the fact that they have that privilege granted them operates to keep other people out, or not? A. Oh, it keeps other people out without a doubt.

Q. Then you consider the right they have there—you consider that to be an exclusive privilege; that the effect of it is an exclusive privilege? A. I do, to the best of my knowledge. Mr. Goucher, I told him, before he ever sat on the Board of Commissioners, after he was appointed—I told him that I hoped that he would see and break up this monopoly, this exclusive rights in the valley.

Q. You told Mr. Goucher? A. Yes, sir; says I: "Mr. Goucher, I thought there was an Act passed to prohibit any exclusive rights?" This was in Mariposa; and he says: "Yes, there was; but," says he, "the Commissioners ignore that by giving the right to one person and depriving others of it."

“They get around the law that way?” I says; he says, “Yes.” That was about what it was.

Q. Was Mr. Goucher a Commissioner at that time? A. He was appointed, but had not acted.

Q. He had not become an acting Commissioner? A. No.

Q. “Reduction of rentals to the prejudice of the State’s income.” Do you know anything about that? A. Not to my own knowledge.

Q. “Failure to recognize their own contracts.” That is, where they have contracted to do certain things with certain parties and have failed, and refused to comply with their obligation; repudiated their own obligation; do you know anything of that kind? A. No.

Q. Do you know of their hiring or contracting with any parties to do work there, and subsequently refusing to pay them for it? A. No, sir.

Q. “Withholding from citizens facts concerning the acceptance of the Stoneman House and illegally leasing the same.” A. Not of my own knowledge; only what I hear from evidence given in this case.

Q. From what you have heard in this case? A. By that gentleman, there (referring to Mr. Choynski).

Q. Unless it was by common notoriety or common repute there, so that you would know it? A: It is common repute; it is commonly talked of that this man offered more than the lessee of the Stoneman House. It is commonly talked of.

Q. That he did what? A. That the Commissioners leased the Stoneman House for less money than this gentleman has offered.

Q. Less money than others would have offered for the same privilege? A. Yes, sir.

Q. That was a matter of common talk—common notoriety? A. Common notoriety.

Q. You don’t know anything about the facts of the case? A. Oh, not the least.

Q. “Rendering useless the district school of Yosemite Valley.” A. I don’t know anything about that.

Q. “Neglect of public roads and trails within the grant.” A. Yes, sir; I know personally about the Glacier Point trail being kept in very poor order, being really dangerous; but the roads I don’t know, nor the other trails, only from hearsay.

Q. You know that the trail to Glacier Point has at times been out of repair, and really dangerous? A. Yes, sir.

Q. That you considered it really dangerous? A. I did.

Q. Do you know whether any efforts were being made about that time to put it in repair? A. It was in very bad repair when the travel stopped last fall.

Q. What was the difficulty in the trail? Was it ditches, and gulches, and chuck-holes? A. Yes, sir; and loose rock, and rocks sticking up; and material, dirt, and sand is hard to be got, and they put poles across, perhaps as thick as my two arms, here and here, a foot or fifteen inches apart. Where it is very steep they put poles on; put big poles here and here, and let the horse go in between them.

Q. You don’t know of any trails or roads being out of repair in the other parts of the valley? A. No, sir, I do not.

Q. You consider that trail really was dangerous to tourists and visitors driving or passing over it? A. Yes, sir; not driving; it is a mountain trail.

Q. Riding; you could ride over it? A. Yes, sir.

Q. Does the condition of that trail interfere with your business? A. Yes, sir.

Q. It kept tourists from getting up to your hotel? A. Well, they start from the Stoneman House, or Barnard's, or campers; they get up there on the top, and talk about the trail being in bad repair, frequently.

Q. Do you think it interfered with your business? A. Yes, sir; certainly.

Q. Kept the tourists from going up there? A. I don't know whether it keeps any, but it makes them talk about it. I think I would be fully as well off if it was kept in good order.

Q. "Failure of the Board to properly manage the Yosemite Valley in accordance with the conditions imposed upon the State by the United States." That is a very broad question, and would cover anything that you may know of the management there? A. My knowledge is that the Yosemite Valley was given to the State of California in trust for all time, and I don't think it is right for them to lease it to private individuals for the personal interest of private individuals.

Q. You think the fact of their doing that is in violation of the laws and the conditions under which the State got it from Congress? A. That is my opinion of it.

A. HARRIS.

Being sworn by the Chairman, testified as follows:

MR. TULLY: The first question here is—and I would ask that you answer as directly as you can, because we have a great many witnesses to examine. State the facts that you know, with as few words as you can and give the full meaning. The first charge is: "Misapplying public moneys and appropriations." Do you know anything about that? Answer—I do, gentlemen.

Q. State what you know, now—give it in as few words as you can? A. When my lease was expired, I had applied for a lease, and I made the most liberal offer as could be made; I made an offer if they gave me a lease for ten years, that I will build a dwelling house at my place—which the old one was no more fit to live in; and I will also build a barn and anything that is necessary on said place. Then I also promised, I shall keep the fences up, which there is needed a new fence almost around the whole entire place; that is, with my own money; and I will pay \$1,750 every year, if they give me a ten-year lease for a livery stable; that is, if they give anybody an exclusive right I would like to have it; I will bind myself to keep the very best horses, good saddle horses, and a stable as it is needed in the Yosemite Valley. If a tourist wished to ride a horse an hour, I was to charge him for an hour's ride; if a tourist wished to ride a half a day, I shall charge him for a half a day's ride; if a tourist will ride a whole day, I shall charge him according to what the honorable Board of Commissioners will set the price—whatever they set. And if they shall doubt what I said, I will give the very best kind of security. And the Commissioners know very well that I had the place there, and made a good deal of improvements, and lived with my family there for twelve or thirteen years. They shall give me a chance to do business. Should there not be granted an exclusive ranch, all I ask is that they give me a lease, and I will take the chances of my business the same as the balance. I do believe if the Commissioners would throw open the business for the public, so everybody can do it, it would be a great benefit for the public. The lease was denied; I couldn't have it; then I couldn't say

a word. I had a paper, black and white, and I left it the other day in the Senate, and have not got it back. I can show you the paper.

Q. Just state the facts? A. This is one thing; now you can ask me. Then to finish this, gentlemen, at the same time the same business is run by Kenney & Coffman for \$1,200. There is no doubt, gentlemen—I couldn't say the estimate of the ground; I have not measured it, but I will come pretty near it. There is nothing less, what Coffman & Kenney keep, from two to three or four hundred acres of ground, the meadow land, the ground for pasturage for their horses, and raising hay and grain. And the way they feed their horses, they run them out at nights, out in the pasture, and in the morning the horse is driven from four to six miles or more in the corral; I don't know if they feed them any or not, but very little feed they get.

Q. That does not matter with us? A. If they feed them, I couldn't tell you.

Q. That was their business? A. Yes, sir; and those horses are saddled for tourists to ride, and I have heard from my knowledge a good many times that tourists have rode the horses, that they couldn't get them back; if any gentlemen doubt it, take and go in there in the summer and I will convince you that I am right. All that brings in to the State is \$1,200, which I offered \$1,750 to keep an A No. 1 livery stable, so that you or any man that comes in can ride with comfort and come back with comfort, which they have not got at the present time.

Q. That is, you offered them \$1,750 for what they subsequently let somebody else have for \$1,250? A. Yes, sir.

Q. That was for the privilege of running horses, running a saddle train? A. I didn't ask no privilege afterwards; I only wanted to take the chances on my business. They have now an exclusive right for \$1,200; there is where it comes in. You can tell the difference between an exclusive right and the public doing business; it is three fourths of the amount of the business.

Q. The fact of the business is, that they let the business to somebody else for \$1,200 that you were willing to pay \$1,750 for? A. Yes, sir.

Q. And they don't do as good service as you offered to do? A. They can't; it is impossible.

Q. What do you know, Mr. Harris, about the destruction of any private and public property there in the valley? State as briefly as you can; tell us what it was—just what you know? A. They have destroyed property in the Yosemite Valley; what they have torn down, and dragged off and burned off; what has injured the State, if you wish to figure it up—you know what it costs. Mr. Leidig would be glad any day to pay \$500 for that hotel—glad to get it back; it was a fine building, one of the best hotels that ever has been kept in the Yosemite Valley for a small hotel, so that any poor man could go in and get a good meal for 50 cents—a camper.

Q. What became of that house? A. That house was torn down; that house, I understood myself, I have not seen it—that the Guardian, McCord, broke it open with a crowbar, when his boys was left in charge of that hotel. I heard of that; Mr. Leidig has said that. I know the house was a good house.

Q. You know it was torn down? A. It was well kept, and it was torn down.

MR. GARDNER: Were you there when it was torn down, or did you see it torn down, or know anything about it but what you heard? A. It was last October, in passing, it was torn down; I drove through there.

Q. What did they do with that stuff when they tore it down? A. I couldn't say; I don't know anything what they have done with it.

Q. "The unnecessary destruction of timber in the valley." A. They have. I can show you in the Yosemite Valley, gentlemen, in hundreds and hundreds of little trees of pine, three fourths grown or half grown, has been chopped down, and the stump been left, that size, from two to three feet in height, and it naturally has disfigured the beauty of the Yosemite Valley; not one or a hundred, but thousands of them; the sap of them little trees, the tops has been shaved off—spent a good deal of money from the State—and nailed down to fences. If any of you has been a farmer, you know it is not fit to build a fence; just as soon as the sun strikes it they crook up and drop off, but it has cost money to the State.

Q. They have spent money to cut those trees down? A. And built fences out of it, and it was no good; it was unjustly cut.

Q. You know that of your own knowledge? A. That I know of my own knowledge; and also, they have chopped down a good number of trees, which has injured the valley a good deal in beauty, which they had no right to do.

Q. Have you any idea about how many, whether it was twenty, or forty, or a hundred of those trees? A. It is hard to count; there might be twenty and might be fifty; if I was there I could show you every stump.

Q. What part of the valley were those big trees cut down in? A. Some at the upper portion of the valley and some up towards the Yosemite Falls, and in all directions all around the valley you might say.

Q. Do you consider the cutting of those trees down was an injury to the valley; to its beauty? A. I do. What right have the Commissioners to cut down the trees?

Q. We have nothing to do with their right to do it; we want to know whether they have done it? A. They have done it.

Q. Well, the next is, "Debarring the general public from joint and legal use of the valley?" A. Gentlemen, the whole valley, what is fit to go around and see anything, is fenced in with a barbed wire fence. I have taken around tourists there for ten years, in carriages; I can't do it now. I used to show them the views and sketches. You can't go through—if a lady wants to go through she tears her dress. You can't get anywhere except you stumble against a wire fence. It is an injury, and has injured the State a good deal of money through that.

Q. You think it is a serious embarrassment or obstacle? Do you think it is really an embarrassment or an obstacle to tourists enjoying the pleasures of the valley when they come there to see it? A. It is.

Q. It is in the way? A. Yes, sir.

Q. Interferes with their enjoyment of the valley, as in your opinion they ought to enjoy it? A. Yes, sir.

Q. "Holding annual meeting with closed doors, in violation of State law?" A. Gentlemen, I have been there at the last meeting; whenever I have got there the doors were closed. I have been in their meetings before; but whenever I got there the doors were closed. I didn't state exactly, but every time I came the doors were closed.

Q. Did you attempt to enter? A. Of course I couldn't enter; the doors were closed.

Q. And locked? A. Locked.

Q. Do you know that of your own knowledge? A. That I know of my own knowledge. I was in San Francisco at the meeting about the hotel, and just the same thing; they ordered us out.

THE CHAIRMAN: How many times did that occur? A. I couldn't tell.

Q. More or less? A. It is most of the time.

Q. Do you think it is their custom to hold their meeting with closed doors? A. I don't know if it is their custom or not, but they generally do it. What they want us to hear they give us a smell of it, and what they don't they close the doors, but the most of the time I found the doors closed.

Q. "Violation of State laws regarding the granting of exclusive privileges in the valley." You have testified in regard to that; you have stated that they do grant exclusive privileges? A. Yes, sir.

Q. Who do they grant those exclusive privileges to? A. Coffman & Kenney, Washburn & Cook.

Q. "Reduction of rentals to the prejudice of the State's income." That is, that they have reduced rentals on property there to the injury of the State? A. Yes, sir.

Q. Do you know that they have done so? A. Yes, sir; they have had my place when I applied for a lease.

MR. GARDNER: You told us that. A. No. There is another thing; they refused to give me the lease, and they went to work—and I generally have paid for the place \$450; I paid \$553 at a time and \$450 at the other. The \$533 was when I had a saddle train; then they took that entirely away and gave it to Barnard. Then I paid \$450 for the ranch and orchard. Then that party went to work, and the time they were there Dr. May was in the valley; I said: "Doctor, I don't think I am treated right. I want that place. I have spent so much money. Shall I apply for it?" "You don't need to apply," he says, "you can get the lease as long as you want to, Harris, sure." Mrs. Barnard even heard it, and I naturally thought he meant it. He smiled in my face and I thought he meant it, so I didn't apply for the place at that meeting. Just at the fall meeting I heard something. Kenney & Coffman went to work and put in an application for my place, and I went below and I put an application in for \$450. Kenney put in an application for \$550, and I had no idea that he would take it away from me at all; and they gave it to Kenney & Coffman. Well, of course I couldn't get it any more.

Q. They gave it to him because he offered \$550? A. \$550, and I offered \$450.

Q. \$50 more? A. \$100 more. Then I had to sacrifice a good deal of money; I was a good deal loser. You know if a man lives thirteen years on a place and accumulates as much as I did, it don't put him in good shape; but I couldn't help myself; and in June, at the next meeting—they never had the place hardly at all—they went to work and had an A No. 1 crop on the place. They had a good thing; they sold hay for \$60 a ton, which has never been done in the Yosemite Valley by Harris; I can prove it. They made an application that they cannot pay that rent, \$550; they can't make it. The Board of Commissioners went to work right away and reduced it down to \$250—the same place. Then, gentlemen, they went to work for the \$250 and built them all them places with the State money at the same rental.

THE CHAIRMAN: Put all these improvements on your place? A. On the place, gentlemen; that has cost a good deal of money.

Q. You say that you lived on that place thirteen years? A. Yes, sir.

Q. Those improvements were your private property? A. Gentlemen, I improved everything, and they took it away from me. I went to the city, to the next meeting—but we will get to it after awhile.

Q. This memorandum says: "Barn built in 1888; house 64 feet long,

24 feet wide; barn 100 feet long, 24 feet wide; guide house; carriage house." All these have been built? A. Yes, sir.

Q. By these parties? A. By these parties, which they pay only \$250 for at the same time; at the same time the campers had a place; I have heard—I couldn't say—that they took that away and gave it to them to pasture their horses, and the campers had to whistle.

Q. They built these houses in addition, and charged them—— A. \$250. If it is worth one cent to-day, it is worth \$1,000.

Q. For property that you offered them \$450 for? A. The old property. There was another thing; I was living in a log house with my family. I have asked the Commissioners—if I have asked them one time, a hundred times: "Gentlemen, I can't let my family grow up—I can't live in this same house any longer; it is impossible." They wouldn't put a nail in. I had to do it. I fixed the house; I fixed the barn; I built the fences; I cultivated the land. If I have spent one dollar, which I can prove, I have spent from \$5,000 to \$6,000 on the place.

Q. They took those improvements from you and paid you nothing for it? A. Nothing for it.

Q. You never got a dollar? A. Not a single dollar. They say I can't get a dollar. I will show you Dr. May's letter.

MR. TULLY: They refused to pay you anything for your improvements—house or anything else? A. Yes, sir; nothing. They kicked me out of there.

MR. TULLOCH: What was the value of those improvements and things? A. My improvements, you mean?

Q. Everything that you had there? A. I don't believe I could replace it for any less than between \$5,000 and \$6,000. Clearing up land in the Yosemite Valley costs money, gentlemen, a good deal of money.

MR. TULLY: Did you ever demand payment for these improvements from them? A. I did.

Q. What did they say? A. Couldn't get a dollar; they haven't got no money.

Q. Well, did they intimate that if they had the money they would pay you? A. Well, they say I wouldn't get a dollar; they have no money; and if the committee had it I don't think I could get anything.

Q. You never did get it? A. No; never got it.

MR. GARDNER: Wasn't it understood, or was it not, when you left there, that what improvements you had made belonged to the State? Wasn't that the general rule there? A. I had a lease, gentlemen, for ten years. When I got it there was nothing there. The place was not fenced; there was nothing there. How could I make a living?

Q. Of course, you had to improve the place; but wasn't it understood, and isn't it a rule, that when a tenant leaves, what improvements he has made belong to the State? Isn't that the rule there? A. I don't know their rules; but the old Board, gentlemen, the old Board of Commissioners formerly has said: "Harris, if you go on as you have been doing;" when they see me making improvement, they actually was liking that. Everybody says: "Harris, you have a park here: you have the prettiest place in the mountains." I naturally thought when my lease expired, that the Board of Commissioners would not go and kick my family out of doors and take it away from me, when I was willing to give more. Another thing; if I would not conduct myself, and would be a gambler and loafer, or would be disagreeable at the Yosemite Valley to the people, I wouldn't mind it. There is a book of nine thousand people who have come to my place, and just as good citizens as there is in the State of California, which

I have got here, everybody. You show me one who will not say that I was the only man that treated them right. And that was the reason that I was kicked out the valley. I succeeded in treating the public right, and that they don't want.

Q. "Failure to recognize their own contracts?" A. Well, gentlemen, not to interrupt you there, when you get to it I wish to ask the question to me why they have kicked me out of the Yosemite Valley? There is a big reason for that.

Q. We will go through with these questions first. Do you know of any instance of their making contracts with anybody, for labor or anything else, and then refusing to pay it? A. Gentlemen, I couldn't tell you facts, only what I have heard.

Q. Of your own knowledge you know nothing about it? A. I don't know nothing about it.

Q. "Withholding from citizens facts concerning the acceptance of the Stoneman House by the State and illegally leasing the same." That is keeping back from public knowledge? A. Well, gentlemen, I was at the meeting in the City of San Francisco at that time. I was down there at the same time when speaking about the lease business. I can't remember everything, and can't say, but I wish I could. I wish I had everything down. I would like to state it, but I can't state; I have forgotten it entirely; but the way things have been managed there it is a shame and an outrage; that is all I can tell you; that is all I know about it. Whatever that gentleman has stated, I don't believe that he has stated one half of it.

Q. You can't say anything about that of your own knowledge? A. I can't state nothing about that.

Q. "Rendering useless the district school of Yosemite Valley." What do you know about that? A. Gentlemen, I left with my family; Mr. Leidig, too, and we left the valley without any children, because we had quite a number of them. I had nine and Leidig had ten, and so that lets them out with the school business.

Q. Did that break the school up? A. That broke the school up. I don't need to answer you that any more. That settles that question.

Q. Is there any school there now? A. I couldn't tell you. I was in the valley twice last year, but didn't notice about the school.

Q. Do you know of your own knowledge that that did break the school up? A. That did break the school up, without a doubt.

Q. "Neglect of public roads and trails within the grant." Do you know anything about their neglecting to repair those roads? A. The road, the last year or two I have been in the valley—of course, I drove around a good deal; the roads were always in pretty bad condition. The trails, I couldn't say; very seldom I went up the trails. I couldn't say nothing about the trails.

Q. What was the difficulty in the roads; were they full of chuck-holes? A. They were not kept in good shape, and a good many holes, and dust up to your knees; what was the cause of it I couldn't tell. They didn't put no dirt there, or something.

Q. What time of the year was that? A. That was about July.

Q. In the dry season? A. In the dry season, sometimes, sooner or later. There is one thing, so far as that is concerned: if the State would spend money, they can make a good road, but if they don't they couldn't make a good road, on account that the ground naturally gets very dusty.

Q. "Employment of State labor upon work for private parties." Do you know of their employing any labor or doing any work there at the

expense of the State, for the benefit of private individuals? A. I couldn't say that, gentlemen.

Q. You don't know anything about it? A. Don't know anything about it.

Q. "Failure of the Board to properly manage the Yosemite Valley in accordance with the conditions imposed on the State by the United States." That is very broad, you know. It covers their general management there.

A. The management of the Yosemite Valley, so far as I could say, has been very bad for years; for two or three years, or more. You can tell by listening to the public. I don't believe, gentlemen, that everybody that goes to the Yosemite Valley will tell a yarn, and somebody must be right. Everybody what has went there during my time, why didn't they holler that Harris has treated them bad? Why do they holler that the balance of the valley people has robbed them? There must be something there. The public isn't wrong with everything. So it must be managed wrong. You take the wire fences, or anything of that kind. That is bad management.

Q. You wanted to state something awhile ago. What was that that you wanted to state?

MR. GARDNER: Where you were kicked out?

THE CHAIRMAN: Tell the committee those things that you know of your own knowledge. A. In 1878 the party was living at my place what has happened to have bad luck; they failed up; they had bad luck in business, didn't manage it right, and they failed up; they busted up, and they had quite a big bill in the store. I kept a merchandise store. I said to my wife, "I want to be a farmer;" and I applied to the Board of Commissioners if I can get the place, I might get even what the boys owed me; so naturally I done it. I made application for it. The answer came, "If you wish to pay the back rent \$800, due by Brightman & Kenney, and to Lemmon's estate, \$1,349 and 40 odd cents, you can take the place and get a ten years' lease." I answered him, "Gentlemen, what do you mean by a ten-year lease for the place. If you grant me the privilege to keep a feed yard, so that I can raise something and sell it there, and give me the privilege to keep some saddle horses and carriages, so that I can supply campers and everybody, and treat them right." They said, "Yes." I told my wife—well, I hesitated quite awhile to pay it, so much money as \$2,100 and odd dollars; but I made up my mind that I would try it. I gave them a note of \$1,300—I have got the note here; I gave them a note of \$1,349 and some odd cents, and the \$800. I paid rent what the other boys couldn't come up with it. One of them is Kenney here. That is the party what has the ranch now. I took the ranch and improved it. At that time you couldn't see a camper at my place. All I had was a few. In 1878 I went before the Board of Commissioners and told them, "Gentlemen, now here, the campers is knocked around in all directions. They have no chance. Why should not a citizen of this State come in here and have just as good a time as a tourist? I think they have just as good a right as the tourist. If a camper comes to my place, they say, 'That is my place—get away.' If he comes here, he say the same thing. Give them some ground and have somebody to show them and sell them what they need, so they can stay here, and give them a comfortable home." They say, "Will you take it?" "Yes, I am going to move on the ranch with my family, and will do the best I can, if you will lay that upper portion off for the campers, which is the best part of the valley, which is dry most all the time." The Commissioners say, "How do you know you are going to take care of those campers?" I says, "I will tell you what I will do. I will give you a book. You put down on the book whatever you wish to." And the Secretary went to work and

took the book and put on, "If you have any complaint to make for any accommodation, you have a right to put it in the public book." And there is the book right here yet. They bind me down. I kept that book from 1878 until I left the valley. I have got nine thousand just as good citizens as there is in this State signed. The book was a public book. I never was home at the time, because I attend to my business. Everybody that comes shall sign their names, judges, lawyers, and senators, and all kinds. The nine years past; my lease was expired.

MR. TULLOCH: Have you got the book with you? A. Yes, sir. Three years ago—it is not quite three years ago—there happened to be something, which I am too soft; I am too good natured; that is the trouble with me.

Q. Tell us what happened? A. Mr. Lundy lived at the Merced River, a gentleman that I was a stranger to him. I stopped there one or two nights; as nice a farmer as I ever could see. He came to the valley; it was the fall of the year; I think it was the last of October. He says, "Harris, I want to see you a minute." He called me out of Leidig's hotel. "What is it, Lundy?" "Will you do me a favor, Mr. Harris?" I says, "If it is in my power, I shall do it." He says, "Now, here, Mr. Harris, the river is so high, the water is so high that I can't get no flour. I have got no flour in my house: Will you lend me a few sacks? I solemnly swear and promise you that I will get you the same brand of flour and just as good flour back." I says, "Why, I don't like to sell flour to you; don't like to have any trouble. Why don't you go up to the store there and buy flour?" The man never answered me. He was an honest man, but I don't think, gentlemen—I couldn't swear to it—I don't think that he had a cent to buy flour. What would you do in a case like that? I says, "Yes, you can have flour, but be sure to give me other flour in place of it." His child was there at Leidig's hotel. He says, "How will I get the flour home, Mr. Harris?" I says, "Mr. Lundy, the water is so bad, I don't know how you will get back." He says, "If you do me a favor, I will pay you for it. You bring my child down to the Cascades, and I will meet you with jacks and I will pay you." And the next day I hitched up my carriage and took my boy in the heaviest rain and snow storm, and took that flour down at the end of the road, right at the Cascades, nine miles from the valley, and he met me and his child, too. He met me there. He packed his flour home. I came home, and in a day or two, as Mr. Dennison was the Guardian, some of his pets—he always had around a lot of pets and work- ingmen—he went to the Guardian and told him that Harris sold flour to Lundy, and he went to work and took the special amount, and sent it down to the Board of Commissioners about the flour business, and they sent for me, and I went down there, and they asked me, and I told them, "Gentlemen, I didn't sell the flour. I gave the flour away almost. If the man gives it back to me, it is all right. He promised to give it back, but I have not received a cent yet, and I took the flour down to him. Is that anything wrong?" From that time I had trouble. It commenced, and I had trouble. The next year—one thing always happened after another—the next year four Judges from San Francisco came up there. They came in at my place in the morning. It was raining. They camped there. It was in the spring of the year. It was raining and snowing, and they came in. The weather was very bad, and I was sitting at my breakfast, and a gentleman stepped in. He said, "Good morning, Mr. Harris." Said I, "Good morning; it is awful cold." I told him to sit down at the stove. He says, "Is your name Harris?" I told him, "Yes." Said he, "Mr. Harris, I have got three more gentlemen out there. Shall I call them in?" I said, "Undoubtedly, if they are cold, let them come in and warm themselves."

And they all sat down and had a talk, and they said, "Harris, here, I would like to ask you something. I see you are just eating breakfast. Couldn't you let us have a breakfast, a warm cup of coffee?" Well, I didn't say nothing. I knew I would put myself in trouble if I did it. My wife spoke up, "Now, here, Harris, we can't let these gentlemen go down in such weather as this. If they are cold, we had better give them something to eat." I said, "You are boss; go and do it, if you want to." I did it, and we had three meals. These Judges ate three meals, and they put me down \$1 for three meals; that is 33½ cents, and I made lots of money out of that. And about three weeks after that, or it might be more, gentlemen, Dr. May came to the valley.

MR. TULLOCH: What were the names of those parties, do you know? A. Yes, sir.

Q. Who were they? A. Four Judges. They were here the other day.

Q. Do you know their names? A. Judge Maguire, Judge Hunt, Joachims, and Judge Lawler. In about three weeks—it might be a month after, I couldn't tell which—the honorable Dr. May came to me and shook hands with me. He says: "Harris, I am sorry for you." I says: "What is the matter, doctor?" "You keep a boarding house at your place. I am sorry for you. You will have to lose your place." I said: "Doctor, if I have got to go and leave the Yosemite Valley, the way you started in to me about the flour business and this business, I see it plain that you want my place. I will leave, but I will let nobody go out in such weather as that, and get nothing to eat. Harris will never do it. If it is an Indian, I wouldn't do it." "Well, I am sorry for you." He shook his hand and smiled to me. "You have no right to interfere with the hotel business." So I went away from him. Well, they have been pouring at me, and pouring at me, until they gave me a permit, and take my place away. I got a permit for one year. What could I do for one year? I couldn't improve the place; couldn't do nothing. The next year again I begged them for another permit for another year. I couldn't do nothing then; and the third year they took it entirely away from me. That ends the Harris farm.

MR. TULLOCH: How long did they make the leases to these parties who now have the place? What is the length of their leases? A. They have got the saddle train lease for five years. How much they have on the ranch I couldn't say, and they are the only persons that could get the lease. Every one of them was refused except Kenney & Coffman—well, the hotel—of course, that was entirely different.

MR. TULLY: Is that all, Mr. Harris? A. So far as I know, gentlemen.

MR. TULLOCH: State what you know about the old State pasture or the wrongful use thereof, or anything you know of it? A. There was another thing, gentlemen. The State has fenced in a pasture right on the public road, near the road, near the store. The man who lives in the store can't move around. The pasture is right in front of his door. I don't think it is further from his door than from this door to that library. That is fenced in for the State mules, which they only had two, and the Guardian had a saddle horse. It is quite a fine piece of meadow. I don't know how many acres. I have been there every day and saw it, and a camper coming in there, the pasture they have given was no account, it was not much account, but the campers say, "Here, Harris, I have got no money, what shall I do? I see the Guardian has got a pasture." Let them go to work and put in a horse there. You have just as much right as they have to it. No man dares put in a horse there, except if he turns him loose he has to pay 25 cents. There was lots of horses in there, if you stake him out, 12½ cents.

Q. A day? A. 12½ cents a day, over night. If you stake him out, 12½

cents. He is only the employed man; the employed man had a horse. I don't think the State let him put horses in for nothing. Where has that money gone to? There is another instance, and that pasture is just as much feed—it is right in the finest place, in the heart of the place; the finest place, which ladies have always made a walk around; the finest green place, where ladies have always walked without any trouble; a fine green spot, and that is fenced in for the State mules.

THE CHAIRMAN: Do I understand you to say the State charges 12½ cents a day? A. Over night, to stake their horses, and 25 cents for turning them loose.

MR. TULLY: Who is that money paid to? A. To the Guardian of the valley. Now, there is another instance, gentlemen: Mrs. Glynn's property has been, as you are aware of—she stated here they took away the stable from her. Just as soon as they had the stable away—took the stable from her, they rented it to the Nevada Stage Company. They have rented it out to teamsters, from two bits to four bits a night for a horse. They charge the teamsters for putting in his horses there. Where has that money gone to? By right it ought to belong to Mrs. Glynn. She has paid for that stable, but where the money is paid in it is to the Guardian. You are not aware of everything that goes on in the Yosemite Valley. I wish you were. That is two instances. Here, gentlemen, is another thing: I stated in the Senate Committee, and I have to state it here too—I can show you I am coming here to tell the truth. I didn't come here to fight any Commissioners; didn't come here to make any statement whatever only for the benefit of the public, and the benefit of the State at large, that they shall go there and be treated like white men. Before that hotel had been leased—I couldn't tell which day it was or which month, but it was before the hotel had been leased—my daughter and myself went down to Cook's. She has made fern cards, and she made her living with it. She made her own clothes and living with it. We went down there that night, and she was sitting just as close to Dr. May as that gentleman is sitting to me. I was standing so far out as from this door to this door, and talking to somebody on business, and Dr. May was sitting—Cook was sitting on a long bench, outside, by the porch; and Dr. May came there and sat alongside of her. He asked Cook, "Have you made up your mind?"—he generally talks loud—I could hear it across the street almost—"Mr. Cook, have you made up your mind on what you are going to do with the hotel business? Have you made up your mind to rent the hotel? Are you going to take it?" "I have not made up my mind yet," he said; "I will rent it if you give me certain privileges, and certain things has to be done," or something like this, you know. Says he, "What is it?" Says he, "We won't allow any more than two hotels in the valley; that is mine and Barnard's," and a good many other things. Says he, "How can you get Leidig away; that is Leidig's place?" "Well," he said, "I don't know; you will have to buy him out." He says, "He wouldn't sell; I don't think I can buy him out." Says he, "If you can't buy him out, you have to drive the stages around, and bulldoze him out of here; that is the only way you can get him out."

MR. TULLOCH: Who said that? A. Dr. May. My child heard it just the same as myself. Now, gentlemen, is that right for a Commissioner to do? I didn't come here to state nothing only justice to the State. I have been wronged. I know I have been wronged, but that is past. I don't calculate to go back and live there again; if they give me the whole place for nothing I wouldn't live on it. They didn't give me a minute's peace.

[Further hearing continued until to-morrow evening, February 14, 1889, at seven o'clock and thirty minutes.]

THURSDAY EVENING, February 14, 1889.

A. H. WASHBURN.

Being sworn by the Chairman, testified as follows:

MR. TULLOCH: Where do you reside, Mr. Washburn? Answer—In San Francisco.

Q. Mr. Washburn, do you know anything about misapplying public moneys and appropriations in relation to the Yosemite Valley? A. There is only one instance that I know of. At the time that they started in to build the trail up to Mr. Snow's, over the Vernal Falls—the time that they let the contract to Anderson. I think it was let for \$1,200 or \$1,500; and I think it ought to have been plain enough that it would have been impossible to have completed the trail for that amount of money, as I have understood that that money was all gone. They worked until they expended that, and then did actually expend from \$7,000 to \$8,000 altogether, and still did not have it completed. Of course, I have examined the country through which it would have to go, and it would take a large amount of money to build it. At least, I would not want to undertake it for \$2,500, to build it now. But they have used a certain portion of that trail. I do not think now there is but a very little of it that was built that was necessary.

Q. That is the trail that goes up on the north side of the Merced River, up next to Grizzly Peak, isn't it? A. Yes, sir; they made a survey down on the river, below the Falls, and built a bridge, and then used the old trail from the other side of the river to go up.

Q. You think there has been an unnecessary expenditure of public moneys on that trail? A. Yes, sir; that is, that portion of it that remains now and not in use; but how much there is of it I could not say; but, really, I do not suppose that there was more than one third of that money that was actually expended up to the time that they started and made this survey down across the river, that was expended in that portion that remains now. It is not used, to my memory. That is what I think.

Q. Was that contract made, was it ordered at a general meeting of the Commissioners, or was it simply the result of the efforts of the executive committee? A. I understood it was by the executive committee.

Q. You do not know that it was ever considered by the entire Board at one of their annual or regular meetings? A. Only what I have heard—that it was not.

MR. GARDNER: Did the Commissioners pay Anderson for the work he did there? A. The time they had a meeting in the valley, it was brought up before the meeting by Senator Goucher, and there were no arrangements made to pay the bill. It never was paid—never to my knowledge.

MR. TULLY: I understand you to say you do not know that they ever did? A. Yes, sir.

Q. Do you know that Anderson ever asked for pay for that trail? Ever put in any claim, or demanded payment for it? A. Not at the time he was living. Afterwards there was an effort made by Senator Goucher to collect it.

Q. Do you know with what success? A. He did not succeed in collecting it.

Q. Do you know why he did not? That is, what was the obstacle? A. Because Anderson did not fulfill his contract.

MR. GARDNER: But did he work after that contract? After he gave up that contract, did he not work a number of days by the day, and was never paid for it? A. I cannot say in regard to that.

MR. TULLY: Do you know how much the demand of Anderson was? How much he claimed to be due him? A. No, sir.

Q. Do you know of your knowledge, or have you good reasons for forming an opinion, as to why it was not paid? Whether there was any other objection than the fact that he had not completed his contract—the legal objection? A. There was no other objection that I know of.

Q. There was no plea put in that they had not the money at their disposal to pay it? A. No.

Q. They simply refused upon a legal technicality that he had not complied with his contract? A. Yes, sir.

Q. I understand you to say you do not know that he ever worked there by the day on that trail independent of any contract at all, except that he was simply to work by day's work? A. I have so understood that he did work there; after he had expended that amount that he contracted for, then he worked by the day's work. Whether he ever was paid for it, that I do not know.

Q. Do you know how many days he worked? A. No, sir.

Q. What was a day's work worth; a good, honest day's work, put in on that piece of road? A. Do you mean to board himself?

Q. Yes. And suppose a man boarded himself. If a man comes and says, "I will do so many days work out there and board myself." A. It is worth \$5 a day. I pay Conway that. He is a good stone mason. I pay him that and board him.

Q. You paid him that and boarded him? A. Yes, sir; I do now.

Q. What does it usually cost a laboring man to live per day? I do not mean to board at the hotel, but to secure such accommodations as a laboring man would have, were he to cook it himself or get somebody else to do it? A. If he had to board it would cost him \$2 a day.

Q. Is it not a fact that provisions and everything that he would have to get there are very high in the valley? A. Yes, sir.

Q. Was this Anderson a very good workman? A. Yes, sir.

Q. First rate workman, wasn't he? A. Yes, sir.

MR. TULLY: If he boards himself he gets \$5 a day? A. Yes, sir.

Q. He would be netting \$3 a day? A. Yes, sir.

Q. I ask you these questions because Mr. Anderson, a brother of the deceased, has testified in regard to the number of days he worked. It is in evidence before the committee that he did work so many days, and we want to get an approximate estimate of what that work was worth? A. Anderson we considered an expert at blasting and rock work. Most of the trail was of that character; that was the reason.

Q. You think \$3 a day for an expert that cared to work upon that Grizzly Flat precipice and take chances—do you think that is an adequate compensation for an expert? A. Yes, sir; I think he would have worked for that. I do not know what he did get by the day, but I consider him cheap at that.

MR. GARDNER: There was a good part of the season he could not put in; he lost a good deal of time in the winter? A. It depends altogether upon the winter. There are some winters you can work. This winter you could have worked nearly all the time; very little time lost.

Q. What kind of a winter was it? A. I could not tell you.

MR. TULLY: I understand that Mr. Anderson put in a claim for so many days; there is nothing before this committee to warrant them in believing that the number of days that he claimed were ever objected to. I want to get at some idea whether or not he put in those days. Do you know of any other instance in which money was misapplied there, or misappropri-

ated? A. No, sir; I do not recollect of any now. Well, yes; there was one instance there of the repairing, I think, of the old sawmill, by Hutchings; I think there was money expended on that, which I considered at the time unnecessary. They did not want any mill in the valley.

Q. They paid money for the destruction of that mill? A. No; for the repairing of it; repairing or putting up a new frame.

Q. That was inside of the grant? A. Yes, sir.

Q. The one that was originally erected by Hutchings? A. Yes, sir; well, it is near that I examined; I could not say in regard to that.

Q. Is that mill being used now, or has it ever been used after Hutchings repaired it for the use of the grant? A. No.

Q. "The destruction of private and public property in Yosemite Valley." Do you know of any instance in which private or public property has been destroyed? A. No, sir; not what I call destroying it. The hotels have been torn down, and I always looked upon them as a disgrace to the State of California. They were nothing but lined and papered houses, and I have been in great fear at times, when we had a large number of passengers in there, and those hotels were filled, that there would a fire break out at the night time, and it would not have been but an instant before it would have been through the whole building, and probably nearly all of them perished.

Q. To what particular hotel have you reference? A. All those that are lined and papered—cotton lining.

Q. Did not a gentleman named Leidig have a hotel there? A. Yes, sir.

Q. Is that hotel extant now? A. No, sir; it is torn down.

Q. What kind of a hotel was it? A. The same kind; lined with paper. Those parties that were renting—persons that rented them—I think they paid all of \$1 a passenger for every one that they entertained throughout the season; that is, in rent; that rent was not expended on the hotels. I do not think there should have been any rent charged. It should have been very small for any hotels there of that character.

Q. How many hotels are there there now? A. In fact, I have heard parties that I have taken in there claim that they were indecent; that they were not fit for the hotel.

Q. How many hotels are there now? A. Two.

Q. What hotels are they? A. The Barnard and Stoneman.

Q. What is the character of those hotels? A. Well, the Stoneman House is hard finished; the other one is not; there have been some additions put on to it, but of course the buildings are separated; there is four of those; a cottage and an old house that was first built there; and I think there was three of them that were put up by Hutchings; and the largest hotel was put up by Coulter and Murphy. Some portions of them are ceiled, which makes it much safer than if it was just lined and papered with cotton cloth.

Q. What is the character of the hotels as to the style, are they first class? Are they way up big hotels, or are they hotels adapted to the use of that class of people who would like to visit, or go there? A. They are now arranged so that they are very comfortable. The Stoneman House, of course, is newly built, and it is all hard finished. There have been repairs made on the other, so it is much more comfortable. It is nicely situated.

Q. That hotel was erected and is conducted, presumably, on the plan of a first class hotel, suitable to aristocratic visitors? A. Yes, sir.

Q. All the conveniences and surroundings that an aristocratic tourist would like to find there? A. It is that way with the exception of some of it being lined and papered; in fact, all of it pretty much except some rooms

that are ceiled. Of course, I do not consider, as I said before, any house that is lined and papered, I do not consider it the proper house to run as a hotel. I think they should be all hard finished.

Q. What is the rate of fare there? A. \$4 a day.

Q. That includes lodging and grub? A. That is, they are allowed to charge that; that is the highest price. Of course, there are reductions made to excursion parties, and some persons that remain there by the week or month.

Q. Do you not believe, Mr. Washburn, that the interests of tourists and campers, and the rest of the aristocratic class of visitors who go into that valley, would like to find cheaper accommodations, and it would advance the interests of the State, and it would redound to the benefit of those who manage it and the State, if there were some second class hotels to which tourists who cannot pay \$4 a day would like to go and find cheaper accommodations, and might find it in those second class houses? A. No, sir; I do not think the travel justifies it. No; I think that the present hotels there are sufficient to accommodate all the travel that goes in there, and that they do now even give them reduced rates; they do not charge them any \$4 a day. Those that occupied the first floor of course pay their \$4 a day. Those that go up on to the third, or even the fourth, in the Stoneman House, they have made a reduction to them. I know they boarded them in there for \$2 50 a day and \$3. Whitcomb & Raymond's parties, all that they pay, provided that they stay three days, is \$9. There have been reductions made to all parties that have gone in there, and they can be accommodated at those hotels.

Q. There are three classes of people; we may classify them in about three grades, who visit that valley. There is the aristocratic tourist, the man of means, the man who is able to pay \$5 or \$6 without its being any great inconvenience to him. Then there is the poorer class who go in there to camp out, who bring their blankets and their cooking stove, or something of that kind, that do not want to go to a hotel, but prefer to camp out. Then there is an intermediate class of people, who form the great bulk of the world at large. Now, there are many of those people who can afford to pay \$1 50 or \$2, or even \$3 a day for accommodations on a trip of that kind, that cannot pay \$4, and still do not want to go and camp out and take their blankets. Are there accommodations and any inducements to people of that kind to go in there and camp? A. Yes, sir. They can go in there and stop at the hotels. They have been accommodated that way. There has been that reduction made to them. I do not think it is necessary at all to have any third hotel there now for the travel that comes, for the class that you speak of. There is only probably—well, at the most, three weeks in all the season that these hotels are filled up, and when persons come along they can get their special rates. If their means are limited, they get a reduction, both on the stage line and at the hotels, too.

Q. Was that Leidig hotel pretty well patronized before it was torn down? A. Yes, sir.

Q. What were the rates paid at the Leidig hotel as compared with the others? A. Well, I think the same. If he cut on his rates, the other hotels would cut.

Q. What were his rates? A. He would charge \$4 a day, but take them for \$3 or \$2 50. I have known him to take them for \$1 50, but of course it was a ruinous price.

Q. Ruinous to whom? A. To Leidig or any hotel man there. The result was that when the Leidig or other hotels were running in competition, why, they had their runners; they would go down to see the passen-

gers, to meet the stage near Bridal Veil or Inspiration Point, and solicit travel for their hotels. They did not then ask any \$4 a day; they would go down to \$3 and \$2; as low as \$2 and \$1 50 a day, and it got to be so that it was a nuisance really, annoying the passengers, and made it really unsafe for those persons that were in the stage, especially if the driver was out watering his horses, which he had to do at the time near the Bridal Veil.

Q. That was the result of the competition, competing for the patronage between the two hotels? A. Yes, sir; but from the time that Cook went in there, and there was pooling of hotels—that is, they made arrangements to charge so much to parties that went in, and made reductions to excursionists that were coming. There was less complaint from the tourists who went in there than there was before. The public was better satisfied.

Q. Do you think the conditions under which those Commissioners assumed the charge of that valley—do you think that it constitutes them the guardians of the travelers there, or even persons who want to pay for the patronage there, to enter into the questions as to whether or not parties competing are making money or not? A. Yes, sir.

Q. You think it is? A. I think it is.

Q. You think it is conducive to the public interest? A. I think it is necessary. I think it is necessary, because no man can go in there and run a hotel if he is losing money all the time; and he can't run it at those rates.

Q. Is not that a matter for those gentlemen, and outside of the Commission? Whenever they can't run it at a profit, isn't there a reason to believe they would get out of the business? A. There is no man who can go in there and take those hotels, any three men, at the time they existed there, and make anything. As long as there was that competition, they could not very well make much money out of it. There is none of them that has got rich.

Q. I am asking you whether you think it devolves upon the Commission to take into consideration that matter, and why do the Commissioners assume the guardianship of those deluded men who want to rush in there and compete for that privilege to run a hotel? Why do they assume that it is not policy to let them go in there and injure themselves, because I understand that, if it is ruinous, it is a matter that concerns those who are competing, and not the Commissioners? A. Well, I do not know as I understand your question exactly.

Q. I will try and make myself plain. I am very unfortunate sometimes in not being able to get my ideas in shape so people can understand me. A. I may be a little dull.

Q. Do you consider that amongst the duties of the Commissioners, that of looking after the interests of those who desire to compete for the patronage of that valley by going in there and opening hotels; whether it is their duty to take into consideration whether those men are making money or not? A. Oh, no; I do not know as it is.

Q. Then why is it that they are so anxious to save those men from injuring themselves by not allowing second class hotels to be run there? A. In the Stoneman House and the other house there are rooms that can be let at lower rates than \$4 a day, and I stated before that if you had the third class house—

Q. I speak of a second class house? A. Well, a second class house, and they kept them for \$2 50 a day—you could not possibly ask them to keep them for less than that—they can keep that class just as well as the other.

Q. Is it or is it not true that the result of having no second class accommodations there, that tourists are reduced to the alternative of camping out or paying the prices of the first class hotels? A. No, sir; I do not think that is the case.

Q. How did the Commissioners get possession and the right to tear down that house from Leidig? A. Well, that is something that I do not know anything about.

Q. You do not know whether Leidig surrendered voluntarily his right there, or whether they purchased his right? A. I know nothing about it. All I know is that the building is down. I know nothing about their transaction at all.

Q. You do not know they obtained the right to tear down that house? A. No.

Q. Do you know what became of that house? A. No, sir; of course, only from hearsay; I do not know anything about it.

Q. I understand you to say you do not consider that the tearing down of that house, you do not look on that in the light of destruction of private property? A. No, sir.

MR. GARDNER: Do you think that any one would attempt to run a second class hotel in the Yosemite Valley at less rates than can be obtained in the hotels already there? A. No, sir; I do not.

MR. TULLY: The third question is, "The unnecessary destruction of timber in the Yosemite Valley." What do you know about that, if anything? A. Well, I went into Yosemite the first time in 1859, in July, and I commenced running my stage in 1866. Of course I have been in there every season since then; a great many times through the year; there may be some trees that are cut down there that was unnecessary; but, as for the great number of trees that have been destroyed, I do not see it.

Q. What is your estimate? Have there been ten of those trees, one hundred, or fifty, or two hundred; any considerable number? A. I do not think there has been any great number of those trees. Of course, there have been some cut down that it would have been better to have left; but for any one to have started in and go out and destroy a large amount of timber, I fail to see it. There are some small trees that are cut down, and my idea has been that this finding fault with the destruction of timber there, it is more to be policy than anything else. It is policy to find fault with all watering places.

Q. That is a little streak of cussedness that runs through human nature? A. Yes, sir; that is exactly what it is. I think that there has been a great deal written and stated about the timber that was destroyed about the Stoneman House. Why, a few years ago, we had a cyclone that tore down trees that were four or five feet through; broke them off like pipe-stems; broke them around and threw them off a long distance.

Q. That was between the Barnard hotel and the Harris place? A. It is very near the Stoneman House; rather too near to make it safe for that building.

Q. But that was not since the Stoneman House was erected? A. No; before it was erected. Of course, there were trees that were cut down there that, had it not been for the Stoneman House, it would have been better to have left them standing, and I know there were a few oak trees that should have remained; that is, it is my opinion that they should have remained, and I think it was a mistake that they cut them down. I think the Commissioners saw it at the time that they were cut down, and really did not intend to order them cut down.

Q. Then it is your opinion that there has been, to some extent, a greater or less extent, an unnecessary destruction of some of those trees, some timber? A. Well, there have been very few; very few.

Q. Have there been any cottonwoods? Any number of those cottonwoods cut down? A. There have been some, but there is a grove left there now. I do not think it marred the beauty of Yosemite at all from those trees that have been cut down among them.

Q. The undergrowth there, the young growth there, has there been any of that cut? A. There has been some of it cut out and there ought to be more.

Q. What was the object of cutting that out? A. It has grown up in thickets too much.

Q. Do you know to what use it was put—that which was cut? A. This last year there has been some cut to clear it up.

Q. To what use was it devoted after it was cut down? A. They would use it for firewood, some of it, and others they would get the brush together and burn it up.

Q. Was that cut down to benefit the State? A. Yes, sir.

Q. Did they utilize any of that wood in the shape of cutting it up and selling it, or anything of that kind? A. Of course there was wood cut up, but I cannot state what use it was put to; whether it was given away, or whether they went to work and cut it up and sold it, I could not tell you. I know some of it was given away to parties that would go and get it—cut it up themselves; but whether the Guardian had the wood sawed up and then sold to parties, I could not tell you.

MR. CHAPMAN: I would like to ask the witness if he does not know that some half dozen trees about the Stoneman House were cut in opposition to the wish of the Commission; in other words, cut by the contractors that built the hotel? A. That is what I have understood—that there were oak trees there which should not have been cut; and it was not the intention of the Commission to have them cut.

MR. TULLY: They were cut down by the contractors without consulting the Commissioners? A. Yes, sir. I know there was a mistake made there and some trees taken down that the Commissioners knew nothing about, and intended they should remain standing.

Q. The fourth question here is, "Clearing and plowing valley meadow land." Do you know anything in regard to that charge; that is a broad question? A. Well, I leased there the El Capitan meadow of the first Board of Commissioners that was in the valley; Professor Ashburner was Secretary; and I went to work and cleared up the meadow, and I fenced it, and I do not think that I hurt it at all myself.

Q. You cleared it of what? A. Of brush; some underbrush.

Q. Did you cut down any trees? A. No, sir; I was not allowed to cut any trees down.

Q. You inclosed it and plowed it up? Did you sow it? A. Yes, sir.

Q. For hay or barley? A. Yes, sir; for hay.

Q. About how much did you plow up? A. How much land I plowed?

Q. Yes? A. Perhaps twenty-five acres.

Q. That was within an inclosure, I understand? A. Yes, sir.

Q. And what kind of an inclosure was that? Was it barbed wire fence, stakes, or poles? A. No; I fenced it with rails; put the poles down and mortised places in for the rails to go.

Q. It was a post and rail fence? A. Yes, sir.

Q. Do you know of any portion of the valley being plowed up there? A. Yes, sir; the Harris ranch.

Q. Besides what you plowed? A. Yes, sir; the Harris ranch was plowed up.

Q. When was that plowed up? A. I could not tell you; well—

Q. Was it during the lease of it? A. Yes, sir.

Q. Has it ever been plowed subsequently, and if so, by whom? A. By Coffman & Kenney.

Q. Who are Coffman & Kenney? A. The men that have the saddle train there.

Q. How much did they plow, approximately? A. I should suppose about sixty acres; but not including that Harris farm, though. This past year—there was some that was plowed up and they put it in—I think it was plowed near the Stoneman House; at any rate, they took a crop off from there this year.

Q. They leased the premises, I understand, from the Commissioners? A. Yes, sir; that is, they leased the Harris farm.

Q. Do you know of any other portion of the valley that is plowed up besides what Kenney & Coffman plowed up? The Harris place and the one you speak of? A. Only the garden spots.

Q. Well, altogether, about what portions, or how many acres altogether? You have been there; you ought to have an approximate idea. How many acres are there plowed up in that valley, usually? A. Now?

Q. Yes, or has there been at any time? A. Well, I don't think it would exceed one hundred acres at any time.

Q. The fifth question is: "Debarring the general public from joint and legal use of the valley." That question, I presume, Mr. Washburn, refers to fencing, or any other barrier that may have been erected there under the direction of the Commissioners, or otherwise, by their lessees. A. Well, I think there is too much of it under fence. I think if there should be some fences removed, it would be advantageous to the valley.

Q. Do you know what the area of the valley is there; that portion of it that is called the floor of the valley? That is, not including the broken part? A. You mean land that would do for cultivation?

Q. I mean what is called the meadow land there? A. As I understand meadow land, it is that that remains moist, isn't it? That is, that would grow grass without irrigation?

Q. That which would grow a natural growth without irrigation? A. Well, now, there is very little of it. I do not believe that of all meadow land there now, that there is to exceed two hundred acres in that valley that would grow grass; what I term meadow land. It would fall short of two hundred acres.

Q. What proportion of the floor of the valley—what proportion does the rest of the floor of the valley bear to the meadow land? A. Well, it don't produce much grass. Some of it does.

Q. What proportion in area? A. That is grass?

Q. Yes, sir; that would produce grass; perhaps not abundantly, but perhaps what you might call second class land? A. I do not know the number of acres in the valley. Of course, there is a great deal of it that produces grass, that gets in among the rocks and brush; but, as to the number of acres, I could not estimate it.

Q. Do you know what the area of the floor of the valley is? A. The entire floor of the valley?

Q. Taking what is below the hotels and up towards Mirror Lake, or up towards Snow's and down below; how much of that is there that would be called the floor of the valley? I understand there are two surveys? A. There might be seven hundred acres, besides the meadow land.

Q. What portion of that has been plowed up and inclosed? How much inclosed and how much plowed up? A. The El Capitan meadow had about twenty-five acres plowed up; I do not think to exceed that; and that is the only place—well, yes, the Leidig meadow was plowed this year. I do not think there is over that amount. Of course, this is guess work with me; I have not measured it; but the Leidig meadow was fifty acres; and what Coffinan & Kenney plowed up was sixty acres.

Q. It would be about one hundred and ten acres? A. One hundred and ten acres.

Q. And the Harris farm has been plowed, hasn't it? A. I have included that. There is a portion of that farm that would grow grass—timothy—and another portion of it that would not if it was sown. There is not moisture enough to do it.

Q. There are about one hundred and ten acres of those seven hundred that comprise the floor of the valley; there are about one hundred and ten acres, according to your estimate, that have been plowed up? A. Yes, sir.

Q. What portion of that valley is fenced up? A. Well, I cannot tell you that. Of course, there are fences running around there.

Q. Of the seven hundred acres, give us an approximate, whether there is one quarter of it, or one third of it, or half of it, or three quarters. We do not presume you have measured it, but you could form something like an approximate idea? A. It is three hundred and fifty acres inclosed; may be four hundred acres, perhaps.

Q. You think four hundred acres out of the seven hundred? A. Yes, sir.

Q. That would be a little over half? A. There are seven hundred acres besides the meadow land.

Q. It is about one half of the floor of the valley that is inclosed? A. No; I do not think there is one half that is inclosed. No; there is not one half inclosed.

Q. What proportion; one third of it? A. Well, not over one third.

Q. What is the character of those inclosures; what kind of fences are they; wire—barbed wire? A. Some of them.

Q. Pickets, poles? A. There is wire and poles that are used.

Q. Barbed wire? A. Yes, sir.

Q. What effect have those inclosures, those fences, that fencing, upon a tourist who goes there, as it affects a person who would desire to have access to all the different parts of the valley? Does it act as a barrier or an obstacle to the free ingress and egress of a tourist or visitor there? A. I think it would be better to remove some of the fences, and give the campers an opportunity to use, perhaps, all the meadows, some of them.

Q. The question is: "Debarring the public from joint and legal use of the valley." Do you think it acts as a barrier, which would at least inconvenience a tourist or somebody else from having free access to the valley, or portions of it? A. I do not know that it has acted that way up to this time. They have always had camping ground for them.

Q. And suppose a tourist would come there and camp somewhere, or put up at the hotels, and there would be a company of them, eight or ten persons, and they would want to take a stroll, go into the little hills and nooks and corners, as many a person would like to do, and gather ferns and get down among those rocks—would this operate as a barrier to their free ingress and egress to such parts of the valley as they wanted to visit? Would they have to climb those fences or crawl under them? A. No; unless they would go on the floor of the valley, and there is not many of them want to do it.

Q. I am not asking you what portion want to do it, but I am asking what effect it would have upon those that did want to? A. They would have to climb over the fences, but there are gates they can get into.

Q. Are there any gates or turnstiles by which they can get anybody out? A. They did have them going from Barnard's down to Cook's to go through. I think that fence ought to be removed now.

Q. Do you not think it is really a very serious embarrassment to a tourist; for instance, a gentleman with a bevy of ladies with him, who wanted to go in there? A. I think I can answer this question in this way: I have always held the idea that fencing the valley too much was not good. I believe in inclosing sufficient ground there to accommodate the cows that are required for the hotels, and some little stock besides, and to have a garden spot; that has been my idea of it. They should not have arranged it so it would prevent tourists from going wherever they pleased.

Q. As a matter of fact, the fences that are there are largely in excess of what you think is necessary? A. Yes, sir; there is more fencing than I think I would have.

Q. Do you consider that those fences add anything to the beauty of the valley? A. No, sir.

Q. Anything to its attractiveness to a tourist? A. No, sir; I do not think there is any beauty in it.

MR. McCORD: What would be the effect if there were no fences in the valley in regard to the interest of the camping people? A. I suppose they would be allowed to occupy the ground that is not fenced.

Q. Supposing there were no fences, that the valley had not a fence in it, and the camping people were there, would they not be compelled to tie their horses? A. That is just what I did when I first went in there; I staked my horse out.

Q. Is the grass sufficient for that? A. It was when I went there in 1859.

Q. Do you not think there is danger at all times in staking horses out by camping people? A. Well, I do not know. I do not think that if a party drives a team in there from those mountain roads that he has got any business to turn his stock out any way. He should take them up and feed them with hay and grain.

Q. That would be working a hardship upon the camping people? A. No; I think it is working a hardship upon the horses, myself. I think if they treat them right after traveling over those roads they should take and feed them.

MR. TULLY: You think the interest of the camper would suggest the propriety of keeping his horses up and feeding them? A. I think a person should study the interest of the beast, the horse that he drives in there. I should keep stock, of course, from running at large as much as possible; let them feed for hay.

MR. McCORD: If the fences were taken away, would not people be compelled to go to stables, and would not it be working an injury upon camping people? A. They should have hay in there, so they can buy it.

Q. It would be compelling them to buy it, if you take away their pasturage? A. I do not think parties ought to stake a horse out, or turn him into a field after he has driven him from Oakland to Yosemite, or Fresno City, or Merced City, or Tulare, and Visalia; that any party has any business to turn a horse out. I think they can feed them. They can buy hay there by the bale and feed those horses; and what they would gain by turning their horses out—if they were allowed to turn them out and let them run and feed—they would lose in horse flesh.

DR. McLEAN: They could have mixed feed—the campers could have

mixed feed. They could have some grass and buy hay and grain besides?

A. Certainly.

Q. That would be less expensive to campers, and the valley would be open for people to go where they choose: and this could be done, I suppose, under proper regulations by the Commissioners, through their Guardian, so that good order could be preserved while the valley was open this way, and campers could use the natural grass that would grow in the valley, couldn't they? A. Well, as I said before, there would be times when it could be used, but, as a general thing, I think they ought to feed their stock. I have to feed my horses when I run them over the road. I would not consider it treating my team right, if I drove them and then turned them anywhere, after leaving the plains, especially if they were not accustomed to the mountains, to take them up there and turn them out.

MR. GARDNER: Even if they did feed them grass there, they would need to stake them out? They could not let them run loose? A. Yes, sir.

Q. Because they would tear all the campers' effects to pieces, and eat the flowers and everything that was around, if they were running loose? A. Of course, the feed that grows there could be used in different ways, by saddle horses in the valley, or by campers, if they wished to stake them out.

MR. TULLY: Do you not think, Mr. Washburn, that if campers were allowed the free use of the greater portion of the valley that it would be more satisfactory to them? And do you not think that it would enable many of those campers, inasmuch as they would have to bring in feed to keep their horses, to a considerable extent necessarily, their own interests would suggest that, in view of the fact that they could use their own horses for traveling up and down and around about, to see the valley, it would be more satisfactory to tourists to be allowed those privileges? A. My experience has been this: I have been there a good many years, and I have taken notice. I do not believe in letting them camp, as you say, all over the valley. For instance, at the Bridal Veil, and a hundred different places through the valley, unless you have a police force established there, and it would take about fifty men to look after them. Then you have cause to complain of destruction of timber, because they will cut down the trees. They will mark their names on them. They should have some place to camp—one or two places—and be looked after. I find that even at the Big Tree Grove parties going up there, especially with their private teams, that we have to watch them; and with all our watching and care they will get out and take their knives and hatchets and cut into a tree and take bark. They do it here in the Yosemite Valley; that is, they mar the trees by cutting their names on them.

Q. One of the duties entailed upon the Guardian, or the person who is directing the affairs there, is to see that they do not do it? A. All this talk about taking stock up there and turning them out, I don't go anything on it. I do not think a man ought to go to Yosemite unless he can feed his horses as they ought to be fed. I mean, to go to the Bridal Veil, and then to the upper end of the valley, and then in the center, and allow camping parties there, and the Guardian is up at the upper portion of the valley—he cannot be all around; and I know that there is fires liable to get out while they are camping; and then they cut into the trees in that way—mark their names. I think that parties who have been in there have noticed that; I know I have.

MR. CRAWFORD: Do you know whether or not, by the order of the Commissioners, the Grizzly Point trail was ever closed up? A. Well, I know this; that it was closed up, and I was informed by one of the Commis-

sioners that it was through no authority whatever of the Board of Commissioners, or the executive committee.

Q. Do you know by whose authority it was done? A. It was done, but I do not believe that it was through any authority of the Commissioners. Therefore, I would like to have that investigated. I would like to know by whose authority it was closed up. It is a public highway; it was. I went to the expense of building a trail through there to Glacier Point, from what we call the Eleven-Mile Station; and the Glacier Point trail, at the time it was fenced up, was a toll trail. Mr. McCauley, at the time, held a lease of it and was collecting toll on it, and I was prohibited from sending parties in that way on horseback, and I was notified when I went out there—I had two ladies with me; they were nieces of T. H. Goodman. We stopped there at Glacier Point over night, and when I was there, about eleven o'clock at night, my brother that was agent in the valley, came up and called me up—I had not gone to bed—and told me that Hutchings had sent him up there to notify me not to come down into the valley; and I told him to go back in the morning and start his stages out, and if he saw Hutchings, to tell him that I was coming down, and for him to come out there and stop me. He sent word that he should stop me, if it took all the force in the valley; but I started down, and in the morning I met Hutchings coming up. He asked me if I had not received word about not coming down. I told him that I had, and thought that I would go. He made no effort at all to stop me, and I went along.

Q. Had you been notified before you went up there not to go; that the trail was closed? A. No, sir; not to my recollection. Now, whether this was before the trail was closed or afterwards—well, I know it was before. Afterwards, right after that, he went out and took some men out there and fenced the trail up; that is, he went off on the side of the ground and felled trees across the trail; made a fence; and there was a party that were going in there, and they had to go around that fence to get in on to the trail and go down; and as soon as I learned that it was fenced up, I sent a party out there, and told them to set fire to it. I think it was a criminal action. They had no more right to fence that trail than they have to go out here and fence one of these streets up; not a bit; it was a public highway, and had been, and I had been taking tourists through there.

Q. You do not know anything about at whose request it was done? A. No; that is what I want to find out. I would like to see whether Mr. Hutchings had to fence it up. I would like to know whether it was from the executive committee, or from the Board of Commissioners, or by whose authority, because I have understood that the Commissioners did not give any such order, nor the executive committee.

Q. Mr. Hutchings was then acting as Guardian of the valley? A. Yes, sir.

MR. TULLOCH: You say Hutchings was then Guardian of the valley? A. Yes, sir.

Q. Well, you do not think it was by the authority of the Commissioners?

A. No, sir; I do not.

Q. Do you know that it was without the authority of the Commissioners? A. I do not know it, only by what I was informed by one of the Commissioners. I was led to believe that they had nothing to do with it.

Q. What makes you think there was no relationship between the two; between the Commissioners and the Guardian? A. Because I had a talk with one of the Commissioners about it.

Q. And did he tell you so? A. I inferred from what he said that it was so.

Q. Was it an inference, or was it a knowledge? A. Well, it was an inference.

Q. And that is your only reason for believing that there was no authority for the destruction; merely what the Commissioners told you, or what you inferred, rather? A. No, sir; that is not. I had other reasons.

Q. Had you other grounds? A. Yes, sir; I had other grounds.

Q. Were they positive means of knowing? A. Well, I had other grounds for that, from a letter that I received from Rev. Dr. Briggs. At that time, there was exclusive right given to the saddle train.

Q. Well, then, it was a mere opinion you had in the matter, and no knowledge at all? Is it an opinion you have in the matter, or is it knowledge? A. It is the knowledge that I have. I am as sure as I am sitting here that there was no order of that Board of Commissioners through the executive committee, or the full Board, that gave him power or authorized him to go there and fence it up.

Q. Did you have thorough and adequate means of knowing that to be true, of finding it out? Did you have adequate means of knowing that there was no authority? A. Well, the Commissioner that I was talking with, I took it from what he said, that there was no order given, but to come out and state positively, he did not, but he said enough to give me to understand it was not so.

Q. He did not positively state so, did he, in express terms? A. I was just as confident as though I saw the minutes of their meetings, their books, and I think if they are examined, you will find that I am correct. As I said before, from the letter that I received from the Rev. Dr. Briggs, he did not write it as an official letter of the executive committee, but he wrote it in regard to taking parties that way, and it was using authority that they had no right to use.

MR. TULLY: The seventh charge here is: "Violation of State laws regarding the granting of exclusive privileges in the valley." What do you know about that, if anything? A. Well, I do not know of any exclusive privileges that they have had—that is, until—I think it was in 1881 since the exclusive privileges were out. Since then, it has been claimed that there are no exclusive rights given. I do not know anything about the leases; I have not seen them.

Q. You say since 1880, was it? A. 1881.

Q. Have there been granted privileges there which you consider exclusive privileges? A. No, I do not consider them.

Q. Well, at any time in the valley within your own knowledge, since you have been acquainted with it, have there been granted rights there or privileges that, in their nature, are exclusive? A. Yes, sir.

Q. You may state about them? A. I should think that there was. That was the reason why I was notified not to come down to Glacier Point, was on account of an exclusive right.

Q. Who had the exclusive right? A. Coffman & Kenney.

Q. That was before there was an Act passed by the Legislature? A. There was an Act passed prohibiting that. It was prior to that, but it was at the time that this trail was fenced up. They were going to put a stop to my running my saddle train in that way. Of course, there is a good deal in connection with this, the fencing of the trail up, which I could tell you if you wanted to hear it.

Q. Anything that bears upon the violation of State laws regarding the granting of exclusive privileges at any time in the valley, privileges of any kind which in their nature tended to exclude or operated as an exclusive privilege—make any statement that will throw any light upon that subject?

A. Well, there was an exclusive right. They claimed that there was an exclusive right, and at that time I was notified not to come down, and Hutchings came out and fenced the trail up. That was to prevent me running my passengers that way; that I should not enter that way with saddle horses in the valley; that I should not stop at Glacier Point, or should not use that trail at all. And I thought at the time, and was well satisfied from what I have learned of this Commissioner, and the letter that I have from the Rev. Dr. Briggs, and other things in connection with the Yosemite Valley and business transactions, that it was done through Hutchings, without any authority, any legal authority, to fence that trail up. Now, from 1866 until I got the wagon road in, I run saddle horses. Hutchings had a saddle train. We were in competition all this time; and when we run our stages he also was interested in a stage line, and there was strong opposition. When they were running from Merced he was interested in that line, and at one time he acted as agent in San Francisco for the travel, and we had our fares down as low as \$7 50. Of course, he felt a desire to run me out, and when the new Board of Commissioners came into power—the old Board was removed and the new Board was appointed—I came up here to see Governor Perkins and asked him not to appoint men that were interested in any business that was competing with my own. I did not think it was proper that they should act as Commissioners, and I named over some that were on that Board that I thought were going to be appointed. One was Senator Meany, who was interested in the stage line that run from Merced; and Mr. Priest, who was interested in a hotel on the other side; and also Mr. Sperry, from the Calaveras trees. He owned the Calaveras trees in opposition to the grove that is owned by the stage. And they were all appointed; Hutchings got in as Guardian, which I think was entirely wrong to place him there, provided they wanted to keep down the feeling that had been going on there among the people in the valley. I think he used his office to injure me.

MR. HUTCHINGS: I deny it.

THE WITNESS: You may deny it; I am talking here now; that is my opinion; not only that, but I learned, from a good authority, that he solicited travel that I brought in on my stages, when he was Guardian there, to go out on the Oak Flat road.

MR. HUTCHINGS: It is false.

THE WITNESS: And that parties that were ticketed around, that he would get hold of them and talk to them, and influence them to go out the other way.

MR. HUTCHINGS: It is not true.

THE CHAIRMAN: Mr. Hutchings, you will keep silence.

THE WITNESS: I ask you to protect me, or I shall protect myself. I am here under oath; I have had parties tell me that I was taken into the valley—

MR. TULLY: This that you have been stating was with regard to Hutchings' privileges? A. And I do not think it was a proper thing to do, to place him in as Guardian, with the competition he had had there before.

Q. Who placed him there? A. I suppose the Commissioners did.

Q. Then if there was an error in that, it was an error of the Commissioners in doing so. Do you know of any other privileges that have been granted there in the shape or nature of leases, or anything else to do business, that tend to exclude others from enjoying the free use of privileges there? A. No, sir; I do not.

Q. Do Messrs. Coffman & Kenney lease their privileges? A. Yes, sir.

Q. Their fields and barn, etc.? A. Yes, sir.

Q. Does the privilege that they have secured there operate to the exclusion of competition in their line of business, or to deter others from going in there? Are the conditions of things such there that they control business at present, or that they have those leases, that it gives them such control of the valley as operates to exclude others from the same privileges? A. That is, the saddle train, do you mean?

Q. Well, whatever business they are engaged in there? A. That rests with the Commissioners. They can have a dozen in there if they wish to.

Q. It rests with the Commissioners? A. Yes, sir; it rests with the Commissioners.

Q. Have they granted to these parties a privilege there under those leases, the operation of which tends to exclude and crush out opposition from competition there? I understand they have the power to grant those privileges to a dozen, but have they done so, or do they lease to those parties and refuse to lease to others? A. As long as there is one party there, there certainly cannot be competition. I could not answer and say that there was competition. There could not be competition unless you have got actually the competition that exists. There is nothing that exists there as a competition. They have the right, and they use it, to regulate the prices of those saddle trains. You cannot regulate it by competition. You cannot go in and offer better horses. No one can go in there and drive up a band of horses to a hotel and lease those horses to the tourists.

Q. Why can they not? A. Because they have no lease.

Q. Well, that is just what I am trying to get at. Then the lease operates absolutely as a barrier to any competition with those gentlemen who hold that lease? A. Of course, as I said, it would be impossible. There is certainly no one party can go in there and have saddle trains, as you know, such as are there now, and have competition.

Q. The reason they cannot have it is that the terms of their lease are such that others are deterred from going in there? A. Certainly. If they would give the lease, they would have opposition.

Q. They do not give that lease? A. I do not know anything about their action.

Q. Do you know of any others who hold privileges there? A. I have understood that Mr. Clark did.

Q. This should operate independently of these other parties there? A. He has done it. He has run there and taken passengers around; did last year. He was working with them, I believe.

Q. Do you know whether he has leased that privilege from the Commissioners? A. He has leased the privilege.

Q. He obtained the privilege? A. Yes, sir; there is two of them for that privilege by leasing it.

Q. Is it, or is it not, a fact that they are jointly interested in that privilege? A. No, sir; I do not think they are jointly interested.

Q. What kind of privilege do you consider that, taking its operation; does it operate as an exclusive privilege or not? You understand what an exclusive privilege means, and its effect. The charge here is: "Exclusive privilege." Now, if there are any privileges granted to any one individual there that, in the conditions of that contract or the effect of it, is to exclude others from competing with those same parties there? A. Well, of course, in that way it is exclusive.

Q. That is one of those privileges that have been termed a single privilege by some of the witnesses who have testified here. They do not call it an exclusive privilege, but a single privilege? A. Well, the contract they hold is not an exclusive privilege. If you give it to one party, it is an

exclusive privilege; if there are two parties there, it is not an exclusive privilege. If they do not run opposition, I do not know that the—

Q. Is it, or is it not true that those privileges are let out at stated periods, and that when one party has secured a privilege of that kind, nobody else can get that privilege, or a similar privilege? That is what I want to get at? A. Mr. Clark has the privilege, has the lease, and Coffman & Kenney have a lease. Now, I do not know whether anybody else could get one or not; and it is not an exclusive lease.

MR. GARDNER: Is there any competition in that business? A. Well, I do not know that there is any competition there. The price is regulated by the Commissioners. If there is any one charged too much, it is the fault of the Commissioners. There has been no complaint to amount to anything.

MR. TULLOCH: What prevents there being competition by those parties? A. They have agreed not to cut on the rates, I suppose.

Q. What prevents Jones, or Brown, or Williams, from going in there and running opposition trains? A. They do not get a lease.

Q. Then they are exclusive privileges? A. As I say, they do not write the leases exclusive.

MR. TULLY: Do you know of your own knowledge, or have you good reasons to believe, that Clark and Kenney & Coffman have pooled their issues and are running in that sense, that they come to an agreement between themselves and regulate the prices accordingly, within the limits and control of the Commissioners? A. I have no knowledge of their pooling their issues. The Commissioners, of course, always said, that to bring any competition there and let the rates be cut down, that they could not support a saddle train. We used to have competition, though, before the roads were built in there, but it is different now from what it was then, because the horses were taken from a long distance from the valley.

Q. Are there any conveniences in that valley for parties who might want to compete there; any conveniences for storing away hay and grain, and such necessities as they would require in order to run a competing team there, if they desire to do so? A. I think there is. I think they could get now a stable for that purpose. I think there could be stable room got for that purpose.

Q. You simply think so; do you know? A. Well, there are stables there. I do not know, of course; I cannot say that the Commissioners would lease the stable; I do not know anything about that. They have got the stables there, and they could lease them, if they chose to do so, to other parties.

Q. Do you know whether they have ever leased them to other parties other than those who are running the stages? A. No; I never asked for an exclusive privilege to run a saddle train or anything else.

MR. COFFMAN: I understood you to say that, at the time that Hutchings obstructed the road, that Coffman & Kenney had the exclusive privilege; is that what I understood you to say? A. That is the way I understood it at the time.

Q. If you will just remember, tax your memory, and see whether Stegeman & Harris did not run about an equal number of horses with me and Kenney? A. That was so. Harris & Stegeman had an equal number of horses that were there.

MR. TULLOCH: How long did that competition continue; how long did they continue to run an equal number of horses? A. Well, I could not tell you.

Q. Did the competition continue long? A. I do not know that there

was any competition. They might have had separate leases, and then go together.

Q. Did they continue along, each one running a train? A. No, not a great while; but the way it has been here, even if there were privileges, if there would be two, or three, or four that had the privilege of running, they would go in together, and pool anyway. What I mean is this: that if you leased any other two, three, or four men the privilege of running saddle trains, they have got to pool if they live; they have got to come to that; they have got to pool, or else some of them are going to get broken up; one or the other.

MR. CHAPMAN: Isn't it a matter of fact that before the passage of this law requiring that the Commissioners should not lease any exclusive privileges, isn't it a matter of fact that the saddle trains did pool? A. They did pool; they were virtually one.

Q. Isn't it a fact that in order to secure the services of competent men and horses during the early and very late seasons, that some protection must be extended to the service? A. Yes, sir.

Q. In other words, during the rush of the season, an outsider would go in with some thirty or forty horses, and take off the cream of the business, and when the travel got slack he would go out of the valley and leave the other men destitute? A. You could not keep up the saddle horses by having competition in that way; that is, if you would start in and give out two or three leases there to parties to run saddle horses, or four. If anybody was allowed to go in there as they used to and rent out horses, why, you could not keep a sufficient number of horses there to accommodate the tourists.

MR. GARDNER: They have got to be protected? A. They have got to be protected and the horses' feed taken care of. The length of the season that the travel is going there won't justify a party to go in there and take opposition, competition.

MR. CHAPMAN: Then, if the Commission did not protect the man in business, in the legitimate business there, they would be open to very much graver censure in not having horses to accommodate the early and late travel, than they are probably subject to? A. They would now, but there was a time when they would not. Before those roads were built in, then competition came in, but after the roads were built in there, you could not put any competition there and keep up horses to accommodate the tourists. And that should be regulated by the Commissioners—the price of those horses, and whether the horse is fitted for the purpose or not—and if he is not, he should be taken out of the valley; and that is the custom there with the Guardian.

Q. Well, do you not know for a fact that the Commission have sought to ascertain from the very best authority prices; in fixing the prices for the use of these horses on the different routes about the valley they have made research to enable them to determine upon the proper price to be fixed upon those routes, so that the charge of excessive charges might not be lodged against them? A. I do not know of any one complaining of excessive charges in there. That is the best way to get at it, if they do not complain—the traveling public; and I do not think that the prices are out of the way.

Q. Well, then, the question of lack of competition, when the prices are not excessive, is really not a very grave fault, is it? When there is no excessive charge, the lack of competition does not seem to be a very grave matter? A. No; of course the travel comes in there in the months of May and June—sometimes it will commence on the first of April—and by the

first of July there is two thirds of the travel that goes into the Yosemite Valley in all the season; that is, April, May, and June. Now you have got two thirds of it. Now you have got to carry in July, August, September, and October (four months), with one third of the travel, that stock that is required to accommodate that travel for the early season up to July. Some seasons we do not go in there until the first of May. You have got to keep that ten months in the year for the sake of using it two.

MR. GARDNER: I do not think the question is whether these exclusive privileges are justifiable or not, but whether there are exclusive privileges. Whether there is actually exclusive privileges; not whether they are justifiable or not.

THE WITNESS: What do you understand by exclusive privileges?

MR. GARDNER: Giving one man the right to carry on business there that is denied to all others. A. Well, then, there is two there who have got the privilege, as I understand it. There is parties got two leases now, and they have the privilege of running there. Now, if it is written "exclusive" in the contract, it has exclusive rights; but if you let half a dozen have the privilege of running saddle horses, and did not put in the word "exclusive," there is nothing to prevent those half dozen people getting together and pooling it, and running it as an exclusive privilege. If they don't they won't run their saddle trains, because they cannot keep their expenses up and do it.

MR. CHAPMAN: I would like to ask the witness: About what expense would the State be put to in order to properly equip some four or five or half a dozen saddle trains, in the way of building corrals, barns, etc.? A. There is no end to that; that is, if you wanted to go in with four or five horses and get accommodations, they would want a barn and corral, and you would have most of your valley built up with that kind of buildings.

MR. TULLY: About how many horses, Mr. Washburn, does it require during the busy season there; about how many horses does it require to do that work? A. There are times there when we have the hotels filled up; there are times when there would be one hundred and fifty.

Q. That is, during the very busy time? A. Yes, sir; and you have got to keep horses to accommodate that travel in the busy time. When there is but one passenger a week, you have got to keep the same number of horses, and you do two thirds of your business from the first of April to the first of July, and you have to keep all your horses ten months in the year.

Q. Do those parties who run those saddle trains keep their horses up all the year, or do they send them out of the valley? A. They are sent out of the valley, some of them, before the travel is over with.

Q. Then it is not an absolute necessity, and they practically do not keep their horses on hand all the year, but only during the busy time? They bring in horses, provide a sufficient number, according to the amount of travel that is expected and anticipated in the valley. They provide beforehand? A. They have to keep them the year round, and it is all perishable property they have got.

Q. They do not keep them in the valley? A. They do not keep them in the valley; they are taken out and pastured at an expense, through the winter. To get good pasture it will cost you \$2 a month. We have got to have parties there that are ready to furnish those horses in the spring and make sure for the travel that comes.

MR. TULLOCH: Who have got to have horses in the spring? A. The parties that hold the leases.

Q. Who are the parties holding the leases whom you have reference to?
A. Coffman & Kenney.

Q. Do they cooperate with the stage line? Do they have any work with the stage line? A. No, sir; there is one thing here that was published: that is, that Mr. Chapman was interested in the stage line. He has no interest in it at all; he never was interested in the Yosemite Stage and Turnpike Company.

Q. Were you not, at one time, interested with Coffman & Kenney in the saddle train? A. No; I never got a lease together with them.

Q. Did you ever have any business relationship with them—any partnership of any kind? A. I furnished them horses. I furnished horses for their saddle train.

Q. You are not a silent partner now with them? A. I furnish them horses now; yes, sir. At the time they got their lease, I asked a lease from the Commissioners, and I did not get it. After they got their lease, they came to me and wanted some saddle horses. They did not have a sufficient amount; and they have had the saddle horses, and paid me for them.

MR. TULLY: Do you know what Coffman & Kenney pay for that privilege, for that lease? What does their lease cost them a year? A. I do not know what they do pay for that. They have the ranch there and the saddle train; they pay so much, but what they pay I do not know anything about. I do not pay any attention to their business. Coffman attends to it, and I do not know anything about it.

MR. TULLOCH: Did you ever receive any percentage at any time for furnishing horses to those parties; any percentage from Coffman & Kenney? A. I never received one single dollar, unless I gave them value received for it.

MR. HARRIS: Have I a right to ask Mr. Washburn a question?

MR. CHAIRMAN: If you want to ask a similar question, all right.

MR. HARRIS: Do you remember, six or seven years ago, I do not know which, that I went before the Commissioners and told you that you received 10 per cent of every dollar? A. I recollect it distinctly, and I also know that you then swore to that that was false.

MR. HARRIS: I tell you, Mr. Washburn, if we had the books here, I would prove it to you that you received every year—

THE WITNESS: I do not deny that I did receive it; I did receive it; but you have got value received for every dollar that was paid. There is one thing that I would like to state, and that is this: about the improvements about the valley. Now I have a lease of a road going down into the valley and the privilege of collecting toll from parties going in, outside of the grant, and I want to state this: that the amount of money that I have expended inside of the limits of the grant—now from Snow's around to Glacier Point, I built the trail at an expense of \$2,000, a distance of about six miles; and I have also built the road from Glacier Point, I should judge about two miles of it, at an expense of \$2,000, so that we run our stages out there. I have no right to collect any toll over that; but, nevertheless, I paid money for the building of it; and down into the valley, from the line of the grant, from the boundary to Leidig's hotel, which I commenced work on in 1874, April eighteenth, and completed it on the twenty-second of June, 1875, and expended \$16,000 on that. So that altogether I have expended \$20,000 inside of the limits of the grant, and in all that time I have leased the El Capitan meadow for \$150 a year. I held it for a few years. I gave it up because it would not pay; I did not make anything out of it; and since then, the only lease I have held has been for a stable to keep my

horses in. I have seen it stated in the papers that I had all the privileges, that is, that I had the cinch on the public, and I could collect whatever I pleased, and do about as I pleased. I never have run one season since I commenced business in 1866, but what I have had competition.

Q. That road you spoke of having leased—I understand that is outside of the valley? A. No; that is inside of the grant, but I hold a lease of it, and can collect toll outside if they pass over it.

Q. Collect your tolls on the outside? A. Yes, sir.

Q. But you collect those tolls upon the road that you have leased from the Commissioners? A. I built inside; it is inside of the grant.

Q. You leased that road from the Commissioners? A. Yes, sir; from the Commissioners; that is, they gave me a lease.

Q. You do not collect any toll within the limits of the grant? A. No.

Q. But you do collect toll on the outside for the road you have leased, from parties going in? A. Yes, sir; I can collect if they come in over the road, outside of the limits; I can collect, but not inside of the grant.

Q. Parties passing over the road from the outside and wanting to get into the valley, before they get into the valley, they pay you toll? A. Yes, sir.

MR. GARDNER: Pay you toll for the road you made inside of the grant? A. Inside of the grant I do not collect it; very seldom that I have collected any toll. I do not suppose, in all the time that I have had the road, that I have collected to exceed \$350, and it has cost me, on an average, \$500 a year to keep it in repair.

MR. TULLY: The next charge is: "Reduction of rentals to the prejudice of the State's income." Do you know anything about that? A. Well, as I stated before, I think the rents have been too high. In regard to the ranch, in ranching in there, I farmed this year two thousand acres; some years I have had in three thousand acres. I have been farming considerably; I have some knowledge of it, and I know you cannot go into the Yosemite Valley, and buy your seed, and do your plowing, and pay the rent of \$535, that Harris paid, and make any profit off of the ranch at that. You have got to have outside business, if you do.

MR. CHAPMAN: Did I understand you to say that Mr. Harris paid \$535? A. That is what I understand; I think that is what he swore to—that he did pay it.

MR. CHAPMAN: Let me correct you. He never paid as much as that. \$450 was the greatest sum ever paid by Harris. A. It might have been that. I saw it in the paper. I got it in my mind that that was what he paid.

MR. TULLY: That is, did you know about that charge of reduction of rentals to the prejudice of the State; you know about those rentals, but you do not express any opinion, except that you think they are too high? A. I think they are too high. I think that all the rents that they have had in there—the hotels have been too high. Barnard, I think, was at one time paying \$1,000; Cook was paying \$700 at one time, and they were actually paying \$1 for every passenger they got.

Q. Do you consider that the reduction of rentals is to the best interest of the State, or are high rentals prejudicial to the best interests of the State? A. I look at this this way: I believe in low rents there, and I believe in setting the figure on those different points as low as possible; that is, with the saddle horses, rating it down as much as you can, and also having as low rates as can be kept at the hotels and accommodate the people, and I think it would have a tendency to increase the travel.

Q. You think the reduction of rentals would enable the hotels to reduce their tariff, their charges? A. Yes, sir.

Q. And that all reductions made in that direction conduce to the best interests of the valley and the people? A. Yes, sir; I do not think it should be a question as to the money that the State should get out of those parties running there. I believe the interests of tourists that go in there should be looked at, and that by reducing the rents it gets in a larger number into the valley; it brings more tourists to this country. They do not leave the money right in the Yosemite Valley, but they stop all over the State, and bring their money here and spend it, and the lower you can make the rates in the valley, the better it is.

Q. You do not think in the management that the best interests of the State require that those rates should be speculative, but reduced to a minimum consistent with the carrying on of business there? A. Yes, sir.

Q. And you think the present rentals are too high? A. I do; yes, sir, I do. They are too high. I think if the rents that Coffman & Kenney are paying, and also Mr. Clark, were reduced down, and the price of carriage higher, saddle horses also could be reduced some; it would be much better.

MR. TULLOCH: Tolls, too? A. Yes, sir; tolls.

MR. TULLY: As a matter of fact, I assume, and presume I am correct in that, that tourists who come to this country, with a view to looking at our country, and especially at the Yosemite Valley, the proportion of money that they spend in the valley is really a very small proportion of what the State gets out of them in coming here? A. Yes, sir; a very small proportion.

Q. And, if there are greater inducements to come here, the State will be amply compensated for the reduction of rentals by the additional attractions to the tourists to come and see the country, and leave their money in it? A. Yes, sir.

Q. The State would not lose anything by reducing those rentals to a minimum? That is what I understand, that your opinion tends to establish that fact? A. Yes, sir; I have always claimed that the rents were too high.

Q. "Failure to recognize their own contracts." The failure of the Commissioners to recognize their own contracts. If you know of any instance in which they have contracted to do a certain thing and have failed to do it, state it? A. Well, of course, I know of only one instance, of my own knowledge, that I know positively, and that is in taking President Hayes into the valley; President Hayes out. I made arrangements, at the time that President Hayes was out here, the Commissioners wanted to take him into Yosemite Valley, his party, extend to him the privilege of coming into Yosemite, and there was a letter that was written by Colonel Jackson of invitation to the President, signed by him, and also by W. H. Mills, and given to Sam Miller, to hand to the President. But I will state before that, that at the time this letter was given, Colonel Jackson came to the office and said that he wanted to extend the courtesy of a pass into the valley for the party, and wanted to know what arrangements he could make. He said he did not like to be personally responsible. I told him that if he wanted to do it we would take them in and it could be allowed on the rent. Says he, "If you will do that it is all right." So he gave this letter; he signed it; and when Miller took it and brought it up to Sacramento W. H. Mills signed it. It was taken on, I think, to Colfax, by Miller and handed to the President. He accepted the invitation, and they went in by the way of Madera, and the Commissioners sent their Secretary along; that was Rev. Dr. Briggs; there was thirteen, I believe, in the

party. I think the bill amounted to \$585; it was an unlucky number thirteen; we did not kill any of them, though; but we took them in and they were well satisfied with everything. Well, we paid all the expenses; and on their return I presented the bill, shortly after that, probably a month or two afterwards. The bill came in, though, from the Commissioners for the stable that I had rented in the valley. Then I had this bill made out and presented it to the executive committee, or Mr. Miller did, and they wrote their names on this bill, and approved it, each one.

Q. The executive committee? A. The executive committee. That was Raymond, Jackson, and Mills; and the next meeting that they had of the full Board of Commissioners, they all voted against it, except Colonel Jackson, and they got the wind of it, and I paid the bill.

Q. Was there not some competition for that job of taking those tourists in, the President and his coterie? A. Not to my knowledge; at that time there was no competition.

Q. Were not there some competition between two lines, and one party proposed to take them in for nothing, and the other party said they would do it? A. I know no more about it than I have heard since. At that time I am positive we would have got the money and got the pay out of them; that they would have paid us for going in. General Grant paid his party in there; General Sherman paid for his, and I do not know why President Hayes would have not done it.

MR. GARDNER: Did not the Commissioners ever pay you? A. I was going to tell you. They afterwards had a meeting, and they paid \$45. That was the Secretary that indorsed on the back of the bill. I do not recollect the year that he was here, but at any rate it was brought up the last time by Commissioner Griffith, and there was so much rent—I think it was \$150—that was behind, and it was outlawed, and also the bill, and I did not pay that \$150 (rent for the stable), and the balance of the bill stands unpaid.

MR. TULLY: That is, the charges for taking that party in? A. Yes, sir.

Q. And what did you state the amount of that was? A. It was \$585. I think that is what it was. It was \$45 apiece.

MR. GARDNER: You got \$195 out of that? A. I took the advantage of the Limitation Act on the \$150.

MR. TULLY: Who plead the limitation? You? A. Well, he pleaded on the bill, and I did on the rent. We did not have much trouble about it.

Q. Do you know of any other instance in which they have failed to recognize their contracts? Have they made contracts with laborers, or anything else? A. They claimed at the time that it was illegal. I know at the time that they had voted against it. If they had come and said: "Why, we find that it is illegal; we cannot pay this; we will pay it out of our pockets," I would not have said a word, but they turned around and voted against it, some of them, after putting their signature to it. I asked Mills at the time if that was the way he did business. I showed him his signature, and says I: "Do you do business that way?" He had his reason—told the reason why he did it.

Q. There was no agreement between the competitors for that job? A. There was no understanding that one party had agreed or proposed to take them in for nothing, and that another of the competitors said: "If you take them in for nothing, I will take them in also?" I never heard a word of it until afterwards that was brought up.

Q. You know nothing of your own knowledge about any agreement of that kind? A. No, sir. Of course they no doubt were after them, and all

that, and they might and might not have gotten them, if we had to take them back. I do not know anything about that. There was no understanding about it, and nothing of the kind.

Q. That is the only instance you know of their going back on their contract, if there was such a contract? A. No; there is no other contract that I recollect of now.

Q. Contract for labor or anything else? A. No. We find them, as far as I am concerned, all right to do business with.

MR. CHAPMAN: I would like to ask Mr. Washburn if that is this Commission or some other Commission? A. Oh, no; not the present Commission.

MR. CHAPMAN: Are we to be charged with this violation of the contract?

THE CHAIRMAN: Certainly not; it is in evidence that you were not connected with the Commission at that time.

MR. CHAPMAN: Is it not a matter of fact that there is but one member, and possibly not one member of the present Commission, that was then a member of that Commission?

MR. TULLY: This committee, as I understand, is sitting here for the purpose of eliciting facts with regard to the management of that valley. We are not here for the purpose of trying, or putting upon trial, any member of that committee, or any special portion of any committee that has been there; but we want to elicit such facts as bear upon the management, upon whomsoever it may have been. We are examining the management, not of any particular individual, or any particular number of Commissioners, but the management of the valley.

THE WITNESS: I was making no complaint about it at all. I saw in the paper that we got \$600; that they paid \$600. So I think it was a mistake.

MR. CHAPMAN: Do you know of any violation of contract on the part of the present Commission? A. No.

MR. TULLY: "Withholding from citizens concerning the acceptance of the Stoneman House by the State and illegally leasing the same?" A. I do not know anything about that at all.

Q. "Rendering useless the district school of Yosemite Valley?" A. Well, I do not think there is anything in that. I think there are children enough there to have a school. I have been asked within a few days here—well, yesterday—to give a pass for a teacher to be up there on the first of April.

Q. Do you know of any instance in which there was a school, which was subsequently discontinued for want of scholars to attend it? A. That is, to pass a teacher to go up there over our stages. What is the question?

Q. I ask you if you know that there has ever been a district school there, and if so, whether it was discontinued at any time for want of scholars, and if that discontinuance was attributable to any act of the Commissioners? A. I never heard of it, if there was.

Q. "Neglect of public roads and trails within the grant?" A. Well, I saw an account in the paper about the roads being out of order, and I was in the valley about that time; it was only a few days afterwards, and I was not in for the purpose of inspecting the roads. I had business there; and I drove around the valley, and my attention was called to the roads. I could not find any fault with them.

Q. Did you go over the trails at that time? A. Yes, sir.

Q. What was the condition of the trails? A. I think the trails were kept in good repair. There are times there when you have showers, that the trails will get out of order; but I think the trails and roads have been kept in as good repair this last season, as any time. So that I am perfectly satisfied,

and with the teams running. Some days I was running four and five stages one way.

Q. Do you think they have been allowed to get into a bad condition, owing to the neglect of the Commissioners to look after them properly? A. No, sir; I do not.

Q. Because the charge is the neglect of the Commissioners? A. I do not know where it is. I have not seen it.

Q. "Employment of State labor upon work for private parties?" A. I do not know anything about it.

Q. "Failure of the Board to properly manage the Yosemite Valley in accordance with the conditions imposed upon the State by the United States." That is a very broad question? A. Well, I will tell you. I think it would be pretty difficult to find—I think that Christ himself could not go in and manage it without complaint, if it was possible for him to be there.

Q. That is a broad question, and very indefinite; still if you know of any instance which, in your judgment, in fact, tends to show that they have failed to properly manage it, state it? A. My knowledge of Yosemite Valley has been for twenty-two years, and in all that time, there has always been somebody finding fault, complaining about something; about mismanagement, bad treatment, and all that, but as a general thing, I have not a fault to find with the Commissioners.

Q. Only those constitutional growls that the public are very prone to indulge in? A. Yes, sir; and I have been interested there more than any other party; that is, I have taken in more tourists than any other line. Last summer I had the pleasure of taking Mr. Whitcomb, of the firm of Raymond & Whitcomb, that sends us more excursion travel than any other. I took him from Raymond into Yosemite and the Big Tree Grove and back again, and he said the roads were much finer than he expected; a different country altogether from what he expected to see. He did not think there was so much mountain travel, and he said that before he went to Yosemite, that he had thought that the prices we were charging were high, but he told me that he did not think we charged enough, and that the hotel fare, too, was cheap; cheaper than at other watering places; and I consider him a competent judge.

MR. GARDNER: As a general thing, did the tourists complain of the prices and the usage they had of the valley? A. No, sir.

Q. They were satisfied with the accommodations; satisfied with the prices that was charged for accommodation, and the fare that they got? A. The complaint has not come from the tourists. There has been but very little complaint. It would be very singular if there were not some that complained in taking passengers in there. But it is from parties that have been in the valley, that have been residing there, or come in there to do business—get five or six saddle horses, and go in and start to do business, and then they would have to go out.

Q. And the most of the tourists did not complain at the prices that they paid? A. No, sir.

Q. Or the accommodations they had? A. They do not mind \$4 a day, if they have good accommodations.

Q. You thought they got the worth of their money there? A. Yes, sir.

MR. TULLY: Are the accommodations that tourists generally get there, as a general thing, satisfactory to tourists, as far as your observation goes; the accommodations in every way; because this can reverse the whole thing? A. Yes, sir.

Q. The facilities for traveling and getting over the mountains, furnishing

guides, and the table, and their lodgings and horses? A. Perfectly satisfied.

Q. You think, as a general thing, it is satisfactory to the general public? A. Yes, sir; of course, you might find a few that would complain. I had one complaint last year, from a man by the name of Chadburne, from Minneapolis, a banker. He complained about the excessive charge of toll, \$22. I was styled as the toll robber. I collected the \$22 because I had a just and legal right to collect it; tolls established by the Supervisors of the county and by the Commissioners. He stated there that he had made his trip, after paying this excessive toll of \$22, for \$110 less than it would have cost him, if he had gone by stage, with a party of five. Now, he could have made the trip from San Francisco into Yosemite for \$175, his party of five. Well, to my knowledge now—I will say first, that if he had made it for \$110 less than it would cost him to go by stage, with a private conveyance from San Francisco—that was the way it was worded in the article—he then should have gone for \$65 with a party of five. Now, he paid \$22 toll on our road, \$5 on the Coulterville road, \$6 horse feed in the valley, \$6 horse feed at Wawona, \$1 50 for his driver, and \$42 50 railroad fare from San Francisco to Merced; making \$83. I think that is correct.

Q. How many were in that party? A. Five. So it is rather crooked figuring.

Q. How much toll do you say he paid? A. He paid \$22 over our route and \$5 over the Coulterville road; \$27 toll. I do not know what they are allowed by law to collect on the Coulterville road, but there was a time before the State bought out that toll road, that Dr. McLean could have charged toll over that portion of the road over the grant; which I think at that time was \$1.

DR. McLEAN: I can explain the matter after you get through, about this toll matter.

MR. TULLY: That \$22 toll, where was it collected; how many times were they taxed with tolls? A. The toll road leading into the grant we had a right to collect \$1 a passenger. Then there is a toll road from the line of the grant to Wawona, a distance of about nineteen miles. Then there is a toll road leading from Wawona to the Big Tree Grove, up to the line of the grant. They are separate charges. And then there is a toll road leading from Wawona called the Mariposa road. One is called the Madera, and the other the Mariposa, and the other is Yosemite, as we term it; and also a toll bridge over the South Fork of the Merced. In those roads we have expended over \$100,000 in the construction of them, and for the last eight years we have collected thirty and four tenths of the amount that we have expended on them in toll, and that is not including the toll of the stage company, but the interest certainly ought to pay that.

Q. By whom are those tolls regulated? A. By the Supervisors of the county.

Q. The Supervisors have fixed the toll, and every person passing over them from one section to another pays the different tolls? A. The toll roads all center right there at Wawona; that is the center of three toll roads.

DR. McLEAN: Except that portion of the road which goes over the grant? A. Of course; to go over that you have to go to Wawona. In going to the valley, or coming from it, you have to pass over that.

MR. TULLY: That would amount to a little over \$5 on each one of those five individuals to get into the valley? A. Well, the reason why we charged it, we do not charge it to parties. It was a competing line. The agent in San Francisco had his office there, and was soliciting travel against us.

That is the reason we charged them that amount of toll. We do not pretend to make any such charge with parties that are coming over with their own private teams, that are not competing lines. We have spent our money there, and we certainly should protect ourselves and collect every dollar that the law allows, against any competing line.

Q. What are your usual charges when not influenced by those competing lines? A. Well, we always collect one fare into the valley, one rate, and to come out half rate.

Q. What do you call a fare? A. That is, we collect toll one way and half toll coming out.

Q. What is the aggregate? A. When there are large parties, we make a great discount to them on it. It is not to our interest for parties that are coming in with private teams, to run them off from high rates of toll.

Q. What is the aggregate to an outsider? When you cannot get the business of this competition, what would be the average toll to a party, say, of five or ten coming in there? A. If they were going in there with four horses, it would be \$13 50 to go in and come out.

Q. To the individual or to the five? A. We would take in eleven passengers; eleven passengers could go in for that.

Q. How much would be the aggregate? A. \$13 50 to go into Yosemite and return over the toll road.

Q. That would be a little over \$1 apiece for eleven passengers? A. Yes, sir.

Q. A party going over there from the outside—say, with a four-horse team—do you charge for the individual—so much for the individual—and then charge him in addition to that for the team going over? A. We do not charge by the passenger at all; in fact, I have always understood we had no legal right to charge by the passenger; that the Supervisors had no right to levy that toll on passengers.

Q. I ask these questions, because you are aware of the fact that there is a very general complaint about the amount of toll? A. I am giving this. It is outside of the grant; it is our business.

MR. GARDNER: The Commissioners have nothing to do with it? A. No.

MR. TULLY: The State has really something to do with it, because it might be to the interest of the State to stop that toll collecting by acquiring the right, or in other words, buying out those roads? A. That is what should be done, and a free road made into Yosemite.

Q. It is to the interest of the State to that extent? State whether the interest of the State would not be better subserved by purchasing those privileges, and making those roads free? A. This road has been built through a mountainous country; a great deal of rock to contend with, and large trees to grub up, and has been a very expensive road to build, and an expensive road to keep in repair, and it is operated only a few months in the year.

MR. TULLOCH: What improvements in the way of roads have been made by other parties in the valley? A. There is the Oak Flat road.

Q. Where is that, and where does it go to? A. That leads on the north side of the valley from the El Capitan rock up to what used to be called Jentry's, upon the line of the grant. That was a very expensive road to build, although it has a very fine grade.

A. Who built it; who are the parties owning it? A. I really cannot tell whether it is separate from the stage company or not.

MR. SPRAGUE: The Big Oak Flat and Yosemite Turnpike Company.

THE WITNESS: Those roads are all built on good grade, and they are located right.

MR. TULLOCH: It is a good road, isn't it? A. Yes, sir.

Q. Kept in good condition? A. Yes, sir.

Q. Would it not be as well for the State to buy that as well as the other? A. The State ought to own all the roads inside of the grant, and it would be better to own them outside; that is, to make them free. In an older country it would be done, or a macadamized road in the Yosemite.

MR. TULLY: I think there is no question about the fact that whenever the State can afford to do it, she had better put a stop to all that toll business; that the best interests of the State would be subserved; probably it would be too much of a job to undertake it just now, because these roads would cost money; they have cost money, and it would cost money to obtain them.

THE WITNESS: There is one thing I would like to state here; in speaking of the saddle horses in there, the pooling of it, and the exclusive rights and all this; that parties would be obliged to pay more by pooling than they would if there was competition there. Now, I will say this: that I do not think such is the case. In 1888, we have pooled with the great Sierra Stage Company—that is, the Yosemite Stage and Turnpike Company—and did business, and the average fare of the parties that we have taken from Raymond into the Yosemite Valley in the year 1888, not including the trees, was \$26 30. That includes the fare both ways. Including the Mariposa trees, it was \$31 30.

MR. McCORD: There is an impression left with the committee that I wish to correct. I understood Mr. Washburn to say that the average cost to a laboring man was \$2 a day for board. Did you not, Mr. Washburn? A. A laboring man \$2?

MR. McCORD: Yes? A. I meant by that that probably he could go there and board himself for that. A laboring man would not want to turn in and cook his own meals.

Q. Is not it a fact that Cook and Barnard board them for \$25 and \$30? A. They have for the past eighteen months boarded them at their hotels.

Q. Mr. Barnard boarded them for \$27 50? A. That may be.

MR. McCORD: It is also a fact that men board themselves for from \$12 to \$15 a month; is it not a fact? A. In speaking of that, I do not consider \$5 a day any too much for a man that is a good hand in working rock, blasting, and who can lay wall.

Q. Is it not a fact that the stage wages are only \$2 50 a day for eight hours? A. I do not know what their price is; I am not posted on that.

MR. TULLOCH: Do you mean to say that a laboring man can board at the hotel for \$25 or \$30 a month? A. That is all they pay there.

Q. Why is it that they charge tourists \$4 a day? A. Well, there are two dining-rooms.

Q. Why should there be such a great difference? A. There is a difference in supplying your table for tourists and laborers.

Q. They live under the same physiological conditions, and what would sustain life in one would sustain it in the other? A. Of course, but you must recollect that the party who boards for \$25 or \$30 a month does not have a room furnished him at the price he pays, and there is not the service on the table.

MR. GARDNER: They do not get the same grub? A. They do not get the same grub.

MR. TULLY: They keep a laboring man's table and a tourist's table; they keep a table to satisfy a laboring man and to satisfy tourists? A. Yes, sir; as I was saying before—talking about second class hotels—parties go in there very often, and go into that dining-room, and they charge them 50 cents a meal. That is all they charge.

J. J. COOK.

Being sworn by the Chairman, testified as follows:

MR. TULLY: Where do you reside, Mr. Cook? Answer—In the Yosemite Valley.

Q. I believe about all we shall expect to question you in regard to is in regard to the leasing of the Stoneman House. Do you know anything about anything connected with that? A. I have leased the Stoneman House for ten years.

Q. You leased it for ten years? A. Yes, sir.

Q. How did you obtain the lease? A. From the Commissioners.

Q. How was that lease let—by advertisement for proposals to take it, or was it open to competition? A. It was advertised in the "San Francisco Bulletin."

Q. For bids to take it? A. Yes, sir.

Q. Did you bid for it? A. I bid for it.

Q. Do you know whether there were any other bidders beside yourself?

A. Well, I understood that there were other bids; I didn't see any others.

Q. You don't know of your own knowledge that there were? A. No, sir.

Q. You got the lease of it? A. I got the lease of the Stoneman House for ten years; from the first day of January, 1888.

Q. What were the terms for which you got it? A. \$1,200 a year.

Q. You don't know, of your own knowledge, that there were any other competing parties for the lease? A. I saw no other applications or bids, sir. I understood it, but then I didn't see them.

Q. Were there any conditions imposed in the granting of that lease? A. Yes, sir.

Q. What was the nature of that lease; just state generally? A. I couldn't tell you; I presume the Commissioners have a copy of it; mine is in Yosemite. I am subject to the order and the will of the Commissioners to keep it open at all times, unless permitted to close it, by them; and they are to regulate charges, and so forth. They have the full charge of it; in fact I have to run it and pay the bills. I also have a permit from them for a garden, pasturage, and merchandise privileges.

Q. Well, state anything that you know in connection with that? A. It was \$350 a year—

[Examination temporarily suspended.]

I. CHOYNSKI.

Being recalled, testified as follows:

MR. CHAPMAN: When did you arrive in Sacramento from San Francisco, after having been summoned to appear here? Answer—When did I arrive in Sacramento?

Q. Yes? A. Last Monday.

J. J. COOK.

Recalled.

MR. TULLY: Now, Mr. Cook, in making your lease, was there any competition at that time; were there any other bids? Answer—I didn't see any other bids. There were other parties there who I supposed put in bids,

and I understood so. I didn't see them. I was talking, and told this gentleman just on the stand——

Q. Were your bids made in accordance with the advertisement in the "Bulletin" for bids? A. I made them from that; yes, sir.

Q. Was the lease you got predicated on that, or were there any terms and conditions made in the lease that you got that were not included in that advertisement in the "Bulletin?" A. Well, the lease is stronger than I supposed it would be; more binding.

Q. Stronger? A. Yes, sir.

Q. In what particular does it differ from what you expected to get, bidding under that advertisement? A. Well, I didn't suppose the Commissioners would compel me to keep the hotel open unless there was travel there.

Q. Well, does your lease require you to keep it open all the year? A. All the year, unless I get permission from the Commissioners to close it, which I have not done. It is open now.

MR. CHAPMAN: As a matter of fact did you not include privileges in your lease that were not considered in the advertisement? A. In my first application for the lease?

Q. Yes? A. Yes, sir.

Q. Did you not make requirements that were out of the province of the Commission to allow or grant? A. Yes; I remember one specification was that there should be but one other hotel allowed in the valley. It was going to cost a great deal of money to furnish the new hotel, and I didn't want to go into that business unless I could get a little protection in that way; but they refused to grant any, even in the least. They have a perfect right to open a dozen more if they see fit. I offered to Mr. Choynski, in case he succeeded in getting the new hotel, that I would sell him the goods, wares, merchandise, furniture, etc., that I had in the hotel that I was then occupying; also the unexpired lease, which of course would have to go by consent of the Commissioners.

Q. To whom did you offer that; this last gentleman? A. Yes, sir; for \$6,000. The newspaper reports rather insinuated that I offered to bleed him to the amount of \$6,000, and not give him value received. That was not the fact. I offered him all that I possessed in Yosemite for that sum of money if he got the new hotel. I was satisfied that the old hotel would not pay to run if the new one was open.

MR. CHAPMAN: Together with your unexpired lease? A. For your years; four years longer the old lease had to run.

MR. TULLY: Were you connected with any other parties at that time in business there? A. In Yosemite?

Q. Yes? A. No, sir; I was stage agent and have an interest——

Q. From what was read I understood there was some arrangement, or something that you agreed to do so far as you were concerned, but that you could not bind your partners, or that there were others concerned for whom you could not speak; that some one asked you if you would agree to protect him to some extent, and guarantee that anything further would not be exacted from him, and that you said you could only speak for yourself, that you would not speak for the others; leaving the impression that there was somebody associated with you, or somebody connected with the business that might come in and require that he should pay a little more, in order to enjoy the privileges that you propose to concede him? A. There was no one else connected with the business, and no one else connected with my hotel business, and I consulted no one as to what I should do. I had been in business for myself twenty-five or thirty years, and

always paid 100 cents, and considered myself capable of doing my own business.

MR. GARDNER: When you asked that \$6,000 from him, didn't he say he was willing to give it to you if you would secure him against your partners coming on him for as much more, and you said you couldn't reach them; you could only speak for yourself; that was what he swore to? A. Well, he swore to a good many things that were not true, and I wouldn't say about that, for the reason that this was a preliminary talk. He had not yet rented the Stoneman House, and therefore was not in a position to buy anything from me. I had nothing to sell until he had rented it. It was a preliminary talk.

MR. TULLOCH: Did you afterwards talk? A. No. After I leased it he came to me several times to know what I would take; but the impression got out in some way that the Commissioners didn't consider him a suitable man to run a respectable hotel, and, therefore, not to complicate the Commissioners, I avoided any conversation with him as to that matter.

MR. GARDNER: Then this conversation did not occur; not as he stated it? A. No, sir; evidence of collusion, he charges, and all that sort of business. There is nothing in it whatever. None of the Commissioners knew how much I was going to bid until my bid went in there and it was opened. It went in sealed. I never consulted them regarding it. In the other room he made charges; I suppose they don't come up here. He claimed that his first bid was \$3,000 more than mine. That is not true.

MR. CHAPMAN: As a matter of fact, Mr. Cook, are you not paying more for your business in the valley than his original bid? As I understood it in his testimony there, he says his bid was \$15,000? A. Yes; I am paying at the rate of \$15,500 for ten years. I am paying \$1,200 for the hotel, and \$350 per annum for the other privileges.

MR. TULLOCH: But are the conditions identical—are the privileges identical with his bid? A. Yes, sir; he claims that he only bid \$100 for what I bid \$350 per annum for. That is what he states.

Q. Were all the privileges that were incorporated in your bid, the same as the privileges incorporated in his bid? A. Yes, sir.

Q. Identical? A. Yes, sir. The hotel rent was fixed by the Commissioners at \$12,000 for the ten years; \$1,200 a year.

MR. CHAPMAN: Was it not fixed by the Legislature? Did they not require 3 per cent on \$40,000? A. Yes, sir; that is the way the bill read by which they obtained the appropriation, that it should be 3 per cent on \$40,000. The other privileges were identical. We all bid on them. I say, "We bid." I didn't see the bids, but I understood so, and he tells us now that he bid \$100 a year for the outside privileges.

MR. TULLY: How do you know what his bid contained? Did you ever see his bid? A. No, sir; but I say the information from which we made our bids was given to us all at one sitting, by the Commissioners. They stated to us for what privileges they would receive bids.

Q. And they were all identical? A. Yes, sir; all identical; all made at one time, by one person, to the bidders. Mr. Choynski, being an irresponsible party, he makes these charges. He knows they are false. He has made a good deal of capital out of it; newspaper capital.

MR. CHAPMAN: Was it not a fact at the time these bids were put in, that Mr. Choynski was just then in the throes of a very disastrous hotel failure in San Francisco? A. I was told that he had made a failure; told before and since that he had made a failure of the house that he had been keeping—the Windsor Hotel, at the corner of Fifth and Market.

MR. TULLY: I understand that he offered every guarantee that was

required by the Commissioners as to his financial ability? A. I hear him say so. That wouldn't go far with me.

MR. GARDNER: Didn't Mr. Goucher vouch for his financial ability? A. I didn't hear it.

MR. TULLOCH: Didn't Creed Haymond vouch for it? A. I never saw Creed Haymond.

MR. CHOYNSKI: Mr. Mills? A. No, sir; not to me.

MR. TULLY: Do you know whether or not, in determining his bid, they were influenced by any supposed inability, after he had offered the guarantees that he did? A. Well, I had heard the Commissioners say so since we have been here.

Q. You have heard the Commissioners themselves say so? A. Yes, sir.

MR. GARDNER: Didn't the Kreling Brothers vouch for his financial standing and ability? A. I saw no paper of any kind, and never saw the Kreling Brothers. I didn't hear them say anything. I don't know what they said.

MR. CHOYNSKI: The Commissioners got the written guarantee from Kreling Brothers that they would put up \$50,000 if I got the lease. They had the writing.

THE WITNESS: The Commissioners are the people who know that. I don't know that. Now, as to the hotel rates in the valley. There has been a good deal said about that, and I would like to explain that the charges vary. The limit is \$4 per day. Excursion people get theirs for \$3 per day. These people that are brought out from the East—for instance, the Raymond & Whitcomb people, that Mr. Washburn was talking about. He brings from three hundred to four hundred people, Raymond & Whitcomb excursionists, into the valley every year. They come for \$3 a day, and the teachers get less than that. There were about five hundred teachers up there last summer, and any one who wishes to go into the second dining-room, can go in there and get a meal for 50 cents—a good substantial meal, too; if he wants it by the week or month, it will be less.

MR. TULLY: Can an outsider that doesn't come over these stage lines, through the agency of Raymond, or those parties who bring parties in there and get reduced rates, could an outsider under similar circumstances obtain the same rates? Is this reduction of rates not a concession made to those parties who bring the tourists, and one that is not enjoyed by the general public? A. There are different qualities of rooms, as there are in all hotels.

Q. Supposing that Raymond & Co. bring over a certain class of tourists there; they come over their line; they are sent to a hotel, and they go there and inquire what the rates are. The rates are made with Raymond & Co., perhaps; when they get there they have a certain rate fixed for the party; and then another party, coming from the outside, who didn't come over that line, can they get the same accommodations as though they had come over that line? A. Yes, sir.

THE CHAIRMAN: At the same rates? A. That is a little different.

MR. TULLY: I mean the same accommodations at the same rates? Then there would be a difference for a person that didn't come over those lines, in their accommodations—different from those brought over that line? A. Not if they come in the same number; but I would contract to take a hundred or five hundred cheaper than I would one. It wouldn't make any difference whose excursionists they were—whether it was a party gotten up among themselves, or some other party.

Q. If the numbers were equal they would find equal accommodations?
A. Yes, sir.

Q. Equal rates? A. Yes, sir.

Q. As those that came over the lines? A. Yes, sir. Even some of them come in there and rent rooms, and bring their food along, or buy it at the stores in there.

Q. And stop in the hotel? A. Yes, sir. It is for the interest of all in Yosemite to satisfy all who come there. Because, if they are satisfied, they go back and send their friends.

Q. We understand that as a general principle of business? A. Certainly. And in connection with that, I own a few shares of the stage stock, and of course I have a double interest in pleasing everybody, and generally succeed.

MR. TULLOCH: What class of people do you charge \$4 a day? A. Well, I would charge this investigating committee \$4 a day, if they came there and had the best in the house.

Q. Would you charge tourists \$3 or \$4 a day? A. Well, as I have just been telling, we charge them \$3, and \$4, and \$2 50. And if they go in the second dining-room—

• MR. GARDNER: If they get the best rooms and the best board, the best of everything, you charge them \$4 a day? A. Yes, sir.

Q. That is the most that you do charge? A. Yes, sir. If they are satisfied with poorer accommodations and not such a fine table, and eat at the second table, the second dining-room, we charge them less; or even the first dining-room and a poorer room.

MR. TULLOCH: Do tourists generally take poorer accommodations than excursion parties and pay \$4 a day? A. The teachers, who visited the valley to the number of about five hundred, wanted lower prices than any other body who had ever been in there; and, as I say, we made them rates for \$2 50, and some of them only had a room, and supplied their own provisions; and I remember one gentleman who came there from Washington; a teacher; he had himself and wife and two daughters; and he told me that he could not afford to pay the rates, and wanted to eat in the second dining-room. I said to him: "The second dining-room is hardly fit for the ladies, and you go into my first dining-room, and when you go away I will charge you the same rate as you would pay in the other dining-room." He did so. Of course the second dining-room does not get the service, and the food is not so nice—so many delicacies. It is hardly a fit place for ladies to go.

MR. GARDNER: You manage to give pretty general satisfaction? A. Yes, sir. Last summer I had about two thousand two hundred guests.

Q. How long will the season continue? A. I left there on the twentieth of November. The hotel is open now.

Q. It generally commences when? A. It commences as early as the roads will permit; about the first of April.

Q. The business don't amount to much after the Fourth of July, does it?
A. No, sir; of course, last year was rather an exception, because the teachers came in August. But after the first of September until the time I closed, I ran behind \$1,000, and it will be another \$1,000 before I get there—the first of April.

MR. TULLOCH: What do you think is the general average into the valley of tourists, parties coming in there? A. Well, there were about three thousand by stages last year, besides the campers. I suppose there were six hundred campers, perhaps, more or less. Campers sometimes came in and get meals; some of them 4-bit meals and some \$1 meals, and some 6 bits.

E. W. CHAPMAN.

Being duly sworn by the Chairman, testified as follows:

THE WITNESS: I don't desire to say anything further than in reference to the leasing of the hotel; nothing that occurs to me at present. We advertised, as I supposed according to law in Mariposa and Tuolumne Counties, and also in San Francisco. I think we used due diligence to bring this matter of leasing the hotel to the attention of every man, or any man that wished to lease hotels; and on the day appointed for opening the bids, we had but three, in two of which there were conditions imposed that the Commissioners thought they were not masters—not able to regulate. Consequently, they were no bids at all, in our judgment. And we had *unlimited* means at our disposal—our traveling expenses were exhausted. I believe the State owes each of the Commissioners—well, varying in sums; some \$30 or \$40 to myself for expenses that year. We could not return home again and readvertise, and appear again unless we did it at our own expense. We had no money in the fund for that business; so we counseled with the three bidders who were present, and asked them to amend their bids, and present them the next day, which they did. In the meantime this gentleman, this person that has been before you, was a total stranger to the entire committee. We had never seen him before or heard of him, and very naturally made some inquiry in reference to him, and I don't feel that it becomes necessary to say that we didn't feel—we felt that we could not very well entertain a bid from him. Besides, his second bid was very much lower than Mr. Cook's, who was the only other bidder that we had on the next day. And in due course, the lease was made out to Mr. Cook. One other reason for asking these parties to amend their bids was, that the law appropriating this money for the construction of the hotel, asked that it pay 3 per cent on \$40,000, and be deposited in the State Treasury. Now, we had to lease, in connection with the hotel, certain ground privileges, etc., that belonged in the Yosemite fund. If we made the lease under the bid to the party it was putting the same moneys that belonged properly in the Yosemite fund in the State Treasury. That was lost to us at that time; and that was one other consideration for asking them to amend their bids, and present them the second day.

MR. TULLY: Well, were those propositions submitted to all the parties?
A. All the parties; they were all present.

Q. This gentleman who testified here the other evening? A. Yes, sir.

Q. The same condition precisely as to all the parties? A. Precisely the same condition to all the three parties, who consented to it and retired from the room, and again appeared the next day, two of them presenting bids, the third one having withdrawn his entirely—presented no bid.

Q. The conditions of those bids had been changed somewhat from those that were advertised in the paper? A. Certainly.

Q. But those other conditions were offered the same? A. Exactly.

Q. To all the bidders? A. For my part there was no prejudice. This person was a stranger to me, and I knew absolutely nothing about him; and while he refers to Mr. Mills as authority for his financial standing, I want to say to the committee that Mr. Mills was the authority for this committee that this man had no financial standing. He had consulted Bradstreet and some other sources.

Q. Bradstreet's commercial agency? A. Yes, sir. Mr. Mills was authority before the committee on the second day that this man had really no financial standing.

Q. Was he made aware of the fact that there were some doubts of his

ability to comply with his contract? A. He was, to his satisfaction; and he stated his authority to the committee, and it seemed to be entirely satisfactory to the committee that they could not, in justice to themselves, consider the proposition; even, mind you, if it had been better than the one presented by Mr. Cook. But Mr. Cook's second proposition was very much the better one.

Q. Well, what guarantee did he offer to give? A. He offered no guarantee, at least—

Q. From a financial standpoint? A. He presented no document to guarantee showing us that he was able to give any guarantee whatever. He made a statement, I believe, that Kreling Bros. would back him in the operation; but it was not backed up by documentary evidence.

Q. You had nothing but his statement? A. That was all, sir.

Q. Did you get any statement from Mr. Goucher? A. Mr. Goucher made no remarks whatever about this gentleman before the committee.

Q. Then you had simply his statement? A. That was all. He was a total stranger to me, and I made no effort to make any inquiries about him, having charged that matter on some other members of the committee.

Q. Well, these changes, or the change that was made in the conditions of that letting? Those suggestions that brought it about, did they originate entirely with the Commissioners, or were they suggested from anybody outside? A. The changes in the requirements from the bidders?

Q. Yes; from whomever should lease it? A. Well, the facts were just as I stated; we were compelled to pay into the State Treasury \$1,200 of the rent from that hotel; \$1,200 a year; and if we rented in connection with the hotel certain ground privileges, store and otherwise, you know, from which the Yosemite fund should naturally derive some \$200 or \$300 or \$400, if we rented the whole together, it would be somewhat difficult to satisfy the State officers that the whole sum should not go into the State Treasury; and consequently we segregated the interests and so instructed the bidders, that they should bid on the segregated interests; the hotel for so much money and the privileges for so much; and then they would go into their respective funds. That was the cause of the amending of the bids. Now, we discussed the propriety of advertising these facts, but, as I say, we had absolutely no funds to travel upon. If we had to return home and come back again in some fifteen or thirty days, we must do it at our own private expense; we had no fund to draw upon, and we had already been drawing on our private purses to defray our expenses of the June meeting preceding this October meeting; so we being in the habit of getting no glory from the position and a very considerable outlay, it was a little monotonous, you know, on a fellow.

Q. Like Mark Twain's cow falling through the top of his house? A. Somewhat; yes, sir.

Q. Then I understand the proposition is, that although those bids were changed, the terms of the lease were changed—the conditions imposed upon the person who should lease it; that those conditions were suggested by the Commissioners, and not from outsiders; and that all of the competitors for that lease were fully apprised of those at the same time? A. Entirely so, sir; so that no honorable gentleman could have for one moment taken exceptions to it.

Q. With regard to the hotel and other privileges? A. They were fully instructed, the three bidders, exactly why this amendment of the bids was asked, and why they could not have further time for consideration. They were in possession of all the facts, just as I tell them, and much more plainly,

because Mr. Mills has a very fine way of putting things, you know, and he was really the spokesman of the committee. And the Secretary, Mr. Griffith, was in this room this evening, but it is so late that he has retired; I would be very glad to have him corroborate me. There was no reason why any honorable gentleman bidding for the hotel on the first occasion should find any exceptions to the proceedings of the hotel committee in placing before that committee his second bid.

MR. GARDNER: Were the Commissioners in the habit of holding meetings with closed doors, having the doors locked? A. I have been a Commissioner, I believe now for five years; I think five years; and I have no hesitation in saying that I have never met in a Commission room with locked doors. During the June meeting of 1885, the Commission went into a caucus for about one hour, having thrown the doors wide open to everybody up to that time; that was about lunch time, I think. We went into caucus for about one hour, and again opened the building to everybody to present any complaints.

Q. With that exception? A. With that exception it has been always with open doors. And I believe that was the first meeting after the passage of the Act; and the occasion for that was that there was a change of Secretaries at that meeting, and some little confusion in the meeting brought about this caucus, you know.

MR. TULLOCH: What was the nature of the caucus? A. Well, it was a purely private matter. We had nothing of public importance under consideration; that is, we were not considering petitions or complaints, or anything of that kind.

MR. GARDNER: The other meetings were not with closed doors? A. Never, sir; and that was not entirely private. Let me correct. Dr. May and the "Bulletin" man, Fitch, were present.

MR. TULLOCH: Didn't Mr. Goucher have some trouble in getting in, and didn't he complain that they would not even allow the attorney of the Commissioners a right to come in? A. I never heard of it, sir; never heard of it; that Mr. Goucher had trouble getting in?

Q. Yes? A. I never heard of it, sir.

MR. GARDNER: You say it was only on that one occasion that they had it? A. That was all; and then that was not private, in fact, because these two gentlemen were with us. In the meantime, during this meeting, Mr. May was made Secretary.

MR. COOK: I have been told by some of the Commissioners that San Francisco merchants appeared before the Commissioners, at the time they leased the Stoneman House, and warned them against letting it to Choynski. Does Mr. Chapman know of such a fact? A. Yes, sir.

MR. TULLY: Was that party who appeared and gave you warning in any way interested in the letting of that house, or connected with persons who had bids there? A. Not at all, sir. I don't know that I have ever seen him since.

MR. COOK: I don't know who it was, but I was told the other day, here in town, that such was the fact.

THE WITNESS: We were in possession of ample evidence, as I said; enough to satisfy anybody.

MR. TULLY: Were you in possession of no evidence, on the other side, of his rectitude and capability of conducting the business, if he was awarded the lease? A. We didn't seek, after receiving the information—

Q. Very true; but did nobody come to his aid or rescue, and recommend him, or agree to stand sponsor for him? A. Not a soul, sir.

I. CHOYNSKI.

Recalled, testified as follows:

MR. TULLOCH: Mr. Choynski, what parties recommended you, if any, to the Commission, as a responsible party, and a party who could carry on the business? Answer—My references upon the bid were Governor Bartlett, Senator Hearst, Dr. William J. Bryan, Railroad Commissioner P. J. White, and William Kreling, besides some others.

Q. Did Mr. Goucher mention you? A. I will tell you how this was. First of all, I desire to make a statement; that I never failed in the hotel business. That is untrue. A hotel which I have kept failed in the hands of other parties.

THE CHAIRMAN: That is not material. A. It has been stated here, and might prejudice the minds of the committee.

MR. CHAPMAN: If I made the statement, I did not make it from knowledge. A. I never failed in the hotel business. The statement was made that I failed in the hotel business, and was on the verge of bankruptcy. I never failed in the hotel business. At the meeting, when the bids were opened, William Kreling was at my side for fully two hours while the Commissioners were transacting business. When Commissioner Mills—I won't be positive whether it was Commissioner Mills—but the question was asked whether I was prepared with the means to furnish the hotel to the extent as stated it would require. I told the Commissioners that I was ready with an amount of \$50,000. They wanted to know whether I could verify that, or give them proof, as they didn't know me. Mr. Kreling had just left me then; I looked for him in the corridor, and couldn't find him; and Mr. Goucher arose in the meeting and made the statement to the Commissioners, saying that he was reliably informed that the means were at my command, and Mr. Mills corroborated his statement; said that he had the same information.

MR. TULLY: These references that you gave, Hearst and those others, did you obtain permission from them to give their names as references? A. Well, I can tell this much, that a number of them made it their business to go and speak to some of the Commissioners. They went to see Senator Goucher and to see Mr. Mills, or sent to Commissioners through friends of theirs. Some of the references made it their business to go right there to the room before the meeting opened. One of them even called Mr. Mills out just before the meeting opened, and I met Dr. Bryan there myself. I didn't know that he was coming, but I met him accidentally. He came there in my behalf to tell these gentlemen that I was not only the most competent man in the State to keep a first class hotel, but that I had all the means at my command that were requisite for that business.

MR. TULLOCH: Who said that? A. Some of the gentlemen to whom I referred; among them Mr. Kreling, Mr. White, and Dr. Bryan. I don't know who else. I mentioned Kreling.

Q. You gave the Commissioners ample and reliable evidence of your capability to receive the lease and receive the business? A. When one of the Commissioners asked the question, after Kreling had gone, whether I could give him that in writing, as Kreling was absent at the time, I brought Kreling's guarantee the following morning, in which he said that he would supply me with all the means that were requisite. They asked me whether I was prepared with bonds, and I spoke that day to some of the wealthiest merchants of San Francisco, friends of mine. Not only were they willing to go upon the bond, but two among them offered to furnish an

additional bondsman, so as to have some one on the bond with them that was congenial to them.

MR. CHAPMAN; I have no remarks to make, I believe, excepting he states when he came the second day—when he came the second day we had no bid to consider. We had then a bid which was a very much better bid to consider, and I disclaim all this. There was nobody to vouch for him, to my knowledge.

THE WITNESS: I came to the conclusion that I couldn't get that hotel on any reasonable terms, and that I would risk my money in a foolish manner, and I filled in that amount for the privileges at a ridiculously low figure. I had offered \$3,000 more, exclusive of the privileges, originally.

ALLEN KELLY.

Affirmed and testified as follows:

MR. CHAPMAN: You had Mr. Choynski summoned here, did you, to appear here, or at your instance he was summoned? Answer—No. I furnished his name at the request of the Senate Committee; not here.

Q. You met him in San Francisco just before coming up here? A. Yes, sir; his name had already been given. A summons had been issued for him and he had not appeared.

THE CHAIRMAN: I summoned Mr. Choynski.

MR. CHAPMAN: You met this man, and he told you he was broke; he didn't know whether he could get up here or not, didn't he? A. What has that got to do with Yosemite?

Q. That is all right. This man is a capitalist. In his evidence he says that he is a capitalist. A. I asked Mr. Choynski if he was coming up, and he said he couldn't come then because he didn't have the money.

MR. TULLOCH: How long ago was that? A. The day I came up, Monday.

Q. How long ago was this matter which you mentioned some time ago about the hotel? How long ago was it that this hotel was leased? A. I don't know what the date of the leasing of the hotel was. I have no knowledge on that matter at all. My impression is that it was some time more than a year ago.

Q. A man might be rich two years ago, and not have a cent to-day? A. Yes, sir.

MR. CHOYSKI: A man might not want to spend any money to volunteer any information.

MR. CHAPMAN: When did Mr. Choynski come up to Sacramento? A. I don't know what day he came up. I suppose it was the day he testified before the Senate Committee; yesterday, or the day before; I don't know.

Q. He has a brother, hasn't he? A. I have heard so.

Q. And his brother was summoned here by mistake? A. So I understand. There was another Choynski here anyway. He was not the man who was intended to be summoned.

Q. And his brother returned to San Francisco and this man appeared? A. I don't know whether his brother returned or not.

ALBERT SNOW.

Being duly sworn by the Chairman, testified as follows:

MR. TULLY: You live right at the foot of the hill, right where you start up to the Vernal Falls? Answer—Yes, sir; I live betwixt the two Falls.

Q. Well, what do you know about that trail; if you know anything about it, tell us what it is? A. I built the trail.

MR. CHAIRMAN: State what you know about it, Mr. Snow; and with regard to the condition of it? A. As far as the condition of it, I kept it in repair for eleven years, or a little over—for twelve years—and since that it has been in the hands of the Commissioners; and it was my business—it was left with me—any time I see the trail out of order, to notify them, and I do so. Every week I go over it; but, of course, it is like this with that trail, there is bound to be—say, after July, we get heavy rains, and they have to have logs across to keep the water from running down, and the dirt will get out of the way, and there was no way to prevent it.

MR. GARDNER: It will get washed out? A. Yes, sir; and as far as any other way the trails have been in very good condition the last two, or three, or four years. It won't do for it to go more than two weeks; I don't suppose there has been any time in the season that it has gone over two weeks without cleaning the rocks out, but at the end of that two weeks it gets pretty bad, along late in the fall; it don't do that way in the spring of the year.

THE CHAIRMAN: Which trail do you speak of now? A. I speak of the one from the foot of the fall here; to the foot of Nevada Fall.

Q. You don't refer to the trail from Glacier Peak around to your house? A. No, sir. I have not been out in two years; that is, as far as the trail is concerned. I could tell you anything about the other matters. As far as the saddle trains, I may state about that, when they make the trip it costs them no more to make a trip in two days than it does in one. If they take one day they have \$6 to pay. If they make it two, and stop at my house over night, they only pay, for the two days, \$5 to make the trip.

Q. That is for a horse and guide? A. That is for a horse and guide.

MR. TULLOCH: How much was that for a horse and guide? A. If they make it in two days, they pay \$5; if they make it in two days, they pay \$2 50 a day, and the party has to pay for the guide; but if they make it in one day, they have \$6 to pay.

MR. GARDNER: For the horse? A. Yes, sir.

Q. And then pay for the guide besides? A. Yes, sir; they have to pay for the guide for the \$6, the same as they do for the \$5; just the same; and the reason that the only charge the \$5 is, they would rather they would be two days making it than to make it in one day.

Q. It is better for the horse? A. Yes, sir.

MR. TULLOCH: What saddle train is this? A. Kenney & Coffman.

Q. In case they make two trips in one day—that is, start early and make two trips—how much do they charge then? A. Well—

Q. I believe there is a distance of twelve or fourteen miles that makes a round trip, or they can make it twice in that distance? A. They can't make it in one day; that is, make two trips in one day; they can't do it. You can't get a horse—you can't hardly get a horse in the world that can make two trips in one day.

THE CHAIRMAN: Does your house stand within the limits of the grant? A. Yes, sir.

Q. Do you have a lease from the Commissioners? A. I have a permit.

Q. For what length of time do they give you that permit? A. For a year.

Q. Did you ever apply to them for a lease for more than one year? A. Well, when I first commenced I didn't have no lease.

Q. Since you commenced taking the lease from them, have you ever applied to them for more than one year at a time? A. I don't know that I have.

[Further hearing continued until to-morrow evening, February 15, 1889.]

FRIDAY EVENING, February 15, 1889.

WILLIAM F. COFFMAN.

Being duly sworn by the Chairman, testified as follows:

MR. TULLY: Where do you reside? Answer—I reside in Mariposa County; seven months of the year in the Yosemite Valley, and five months in Mariposa town.

Q. I presume you are pretty well posted with regard to the object of this investigation? A. Well, from one standpoint, yes, sir.

Q. Certain charges have been preferred here. It is the mission of the committee to try to obtain a little light upon that subject, and the proceedings here have been introduced to interrogatories on the different charges that have been made. The first charge here is "Misapplying public moneys and appropriations." Are you acquainted, Mr. Coffman, pretty generally with the management of that valley? A. Yes; I am as much so as any one, I guess.

Q. This charge is "Misapplying by the Commissioners." A. Of public money?

Q. Yes? Without any reference to any particular Commissioner or any set of Commissioners, but for the general management of the Yosemite Valley? A. I take it that that charge would imply, in using public money, a criminal intent, under that charge.

Q. No; it does not necessarily mean applying it with a criminal intent. A. I think there may have been possibly an error of judgment at times, but certainly no criminal intent, that I think that could imply; it would, in my judgment.

Q. Money may be applied without any criminal intent, and applied to a bad purpose? A. Very true; if a cashier of a bank steals a couple of thousand dollars, and gets away with it, he may say he misapplies it, without any criminal intent. I take it to be the same in that case. I think in a certain case—the road that was spoken of last night.

Q. This is very plain language: "Misapplying public moneys and appropriations." A. I don't know anything of that kind, according to my way of thinking.

Q. You have no knowledge of any spending of money, or the use of money in that valley that would come under the head of misapplying it? A. No, sir; I don't think they did it.

Q. Are you pretty well acquainted with the expenditures of money that have been made in that valley? A. Yes, sir; with all of them.

Q. Moneys at the disposal of the Commission? A. I have been a resident of the valley for fourteen years nearly.

Q. Have you pretty generally an accurate knowledge of what use the moneys have been put to? A. Yes, sir; I have a knowledge of all the moneys that have been spent in there. All the improvements that have been done have been paid for by the State, and as a matter of course I would know what the improvements were.

Q. Have improvements been made there by the Commissioners, or under their orders, that in your judgment, amounted to a misapplication of the money? A. No, sir; as I said before, I couldn't call it by a harsher term than an error of judgment. I don't believe it was a misapplication of funds, because it would imply something else, and I couldn't say so, because I don't think it would be true.

Q. Have there not been moneys spent there in that valley that, in your judgment, might have been appropriated or applied to a better purpose? A. Yes, sir; that is true.

Q. Upon what do you predicate your ideas that it might have been applied to a better purpose? A. Well, the very trail that was spoken of last night. I think if that money had been applied in some other parts of the valley, it would have been very much better—the trail that Washburn was testifying to. This appropriation of funds, I think, as I said before, that it was not intentional on their part. I think it was wrong judgment; an error of judgment.

Q. We are not questioning their judgment, but simply the fact whether moneys have been applied there, in any particular instance, in which, it was not, in your judgment, to the best advantage, not the best means; the best application of the money at their disposal. You cite that trail. Give us some reason why you think that was an injudicious expenditure of money, if you think so? A. It was an error of judgment, in the first place, as I take it, that the Commissioners allowed the man to take the contract. They took the man's judgment that took the contract. I have had some experience in building roads, and did so by contract. Now, when a man would come to me and say, "Well, I will build you that five miles of road, for say \$5,000," why, if I thought it would cost me more than that, I would say, "Will you take the contract?" I won't say, "You will not do it for that, I will give you \$10,000." That would not be a business transaction. In this case the man worked up the job himself, to put the trail there. I don't think the Commissioners broached the subject to him. He wanted a job, and he worked it up, and said, "I will do that for \$1,500." If the Commissioners had had the judgment that the man ought to have had that did the work, they would have said to him, "You can't do it, we won't give you that contract, because we know that you can't do it for that money." But I don't think that they knew that. They thought if the man could do it for \$1,500, it would be a cheap job, and so it would, and they contracted with him for \$1,500. Well, of course, it was a failure.

Q. Are not those Commissioners supposed to be men of ordinary business capacity and intelligence? A. Yes, sir; I would suppose them to have been such. However, when that transaction occurred, I don't know how many Commissioners that is on this Board was there then. I don't know whether there is any except Madden.

Q. It does not apply to any particular Commissioner, or any particular set of Commissioners?

MR. HOOK: What year did that happen in? A. That the trail was built?

Q. Yes? A. Well, I couldn't tell you the exact year, but I think it was six or seven years ago.

MR. HUTCHINGS: In 1882 or 1883? A. I know it was six or seven years ago.

MR. HOOK: You don't think there was any of the present Commission on there except Madden? A. I believe not.

MR. TULLY: Well, do you consider yourself an expert or better capable of judging whether the man would be able to do that work for that amount of money? A. I am not an expert in any such business as that; no. I am not testifying as an expert.

Q. Do you consider that you are better calculated to judge of whether or not that was a judicious operation? A. It was my judgment that the man could not do the work for that money, if that is what you mean; my judgment was that he couldn't do the work for that money.

Q. You don't claim to be an expert? A. No.

Q. In your opinion, were not those Commissioners just about as well calculated to judge of that matter as you were? A. It was an error of judgment with the Commission. I could not give it another name.

Q. I am not talking about that, but as to the fact; if you had had the letting of that contract? A. I would let it to him for \$1,500, and I would have made him build it, or I would not have paid him a cent. That is what I would have done. I would have let him take it. I would have made him give me a bond, or build it; or I would not have paid him.

MR. HOOK: Did he not build the trail? A. No, he didn't get anywhere with it. He got it started; certainly.

Q. Did they pay the money? A. I have no knowledge, whether they did or not. I have understood that they did, but I don't know that of my own knowledge. I know he did not build the trail. I know that of my own knowledge.

Q. How much of the trail did he complete? A. For the \$1,500?

Q. No; how much did he complete of the bargain? A. He has built, I should say, something over a mile.

Q. How long a distance was the trail? A. If he had completed it?

Q. Yes? A. He built more than a mile; I guess, probably, a mile and a half.

Q. How long was the trail? A. What trail do you mean?

MR. TULLY: The trail that he contracted to build? A. Well, he would have had to have went about three or four hundred yards further; that was all. He would have had to have built about three or four hundred yards further, but it would have cost him—well, he couldn't do it, I don't think, for \$5,000 or \$6,000, or \$8,000. It just bluffed right up against a bank of solid granite. I don't know what the height is; probably seventy-five or eighty feet. and there was no other way in the world but to go right through it. It would have been all blasting, and it was very hard rock, and I wouldn't know what to estimate.

MR. HOOK: You have no knowledge as to whether he was paid anything on the contract? A. No; I don't know anything about that. I never saw any of the books; never saw him receive a cent of money, and he never told me anything about the matter.

MR. TULLY: Was that trail subsequently finished? A. No, sir; and never will be, in my judgment.

Q. Was there any work done on that trail by the contractor after his contract expired? A. I have understood there was; but of my own knowledge, I know nothing about it. I have understood there was.

Q. You don't know whether he ever worked there by the day on that contract? A. No, sir; I do not. I have heard he did, but I don't know whether it is so or not.

Q. You don't know whether he ever received any money or not? A. No, sir; I never knew positively of my own knowledge of his ever receiving a cent.

MR. HOOK: Do you think then in building that trail, it was just a difference of judgment between you and the Commissioners? A. I think it was an error of judgment in the Commissioners letting him go any further after the contract expired. For instance, when he contracted to build the trail clear through for \$1,500—understand me now—when he had expended his first \$1,500, if they paid him (I don't know whether they did or not), and they found he only got so far, and did so small an amount of work, it seems to me to let him have another contract for \$1,500, was an error of judgment; that is, it was not right.

Q. Did they let him have another contract? A. That is what I have heard; I don't know; I have heard so. I know he worked there; I saw him at work there.

Q. What is your business there? A. I am in the livery business.

Q. Are you one of the firm of Coffman & Kenney? A. Yes, sir; I am one of the firm.

MR. TULLY: You had ample opportunities, had you not, to judge of the character of the work that was to be done there, and that was contracted for with that gentleman? A. Yes, sir; if I had been a Commissioner, and he would have offered to have done the work for me for \$1,500, I would have contracted with him at once; I wouldn't have hesitated a minute.

MR. HOOK: But you would not have been willing to pay him unless he finished his contract? A. No.

Q. You do not know whether the Commissioners ever paid him anything? A. I don't know whether they paid him or not.

MR. TULLY: Have you ever estimated, or have you any knowledge, from personal inspection, of what the value of the work that he did would be worth? A. No; I wouldn't form an idea; I wouldn't undertake it; wouldn't attempt to make an estimate, or anything of the kind; I couldn't do it.

MR. TULLOCH: After the contract was over, did Anderson do any further work for the Commissioners? A. Yes, sir; I have so stated.

Q. Do you know how many days he worked? A. No, sir; I don't know anything about it.

Q. Do you know whether he was paid for it? A. No, sir; I know he worked there, because I saw him working there myself. I have just stated that.

MR. HOOK: He had a right to work there, if the Commissioners had not paid him for the other work, hadn't he? A. If they had not paid him?

Q. Yes? A. Well, I don't know; I don't understand the question.

Q. The question is this: If he was paid for the other work, it looked like they had paid him for something he didn't complete? A. And that he was willing to go on with it.

Q. Is that the same trail he worked on? A. Yes, sir.

Q. Afterwards? A. Yes, sir; he worked right on the same one.

MR. TULLY: The second charge here is, "The destruction of private and public property in Yosemite Valley." A. Well, as to the destruction of private property, I don't see how it would be possible for the Commissioners to destroy private property, from the fact that the property there belongs to the State, and would be considered, in my mind, public property. I tell you that for the first part of it.

Q. Has there been any property at all destroyed there? A. There has been some buildings torn down; yes, sir; several of them.

Q. Do you know to whom they belonged at the time they were destroyed? A. They belonged to the State, I suppose.

Q. Do you know that, of your own knowledge, that they belonged to the State; in other words, that the State had acquired the title? A. Well, I don't know. I have been in the valley for a good many years. I never owned any property there. I always leased mine from the State.

Q. Who had possession of that property prior to its destruction? A. Possession of which?

Q. Well, what was the character of any of the property, if you know of any property? A. I know what was known as the old Cook hotel has been torn down, and the lumber that was in it that was good for anything has been worked into other buildings, and the debris that was left burned up. It was so with the Leidig hotel. And it was also the case with this man Anderson, that had the contract of the trail. He had a little shanty for boarding the men, and changing their mining clothes, and so on, and sleeping and living. That was torn down and the lumber removed.

Q. The Leidig hotel was torn down? A. Yes, sir; I spoke of that before. That was the little house I am talking about now, up where this man was building the trail. That was torn down, and there was a building torn down that used to be a photograph gallery, a small building. I don't know for what reason that was done. I was not there when it was torn down. It was done in the winter, when I was out. I know of those four buildings having been torn down.

Q. Have you any means of knowing whether there was any of that property belonging to or was claimed by private persons at the time of its destruction? A. I have understood that Anderson claimed the building up at his place, and it seems to me that somebody has told me that there was a claim on the old photograph gallery, but I couldn't tell who it was.

Q. Was there a claim to the Leidig hotel property? A. Well, Leidig claims that too, I believe.

Q. And then what was the name of the other? A. Cook. No, there was no claim for that, because it was all paid for. The State paid \$16,000 for it.

Q. What was the character of that property for which they paid the \$16,000? A. Well, when they bought it it was all right, but when they tore it down, if they had left it another year, they would not have had anything to tear down. It would have fallen down itself. Part of it fell down last winter.

Q. How long after they bought it before it was torn down? A. I can't tell. The statutes will show what year. The State appropriated \$60,000. Mr. Hutchings, you can give me the date. By the way, you sold yours at the same time. What date was it that you received your money for your place?

MR. HUTCHINGS: 1874.

THE WITNESS: 1874.

MR. HOOK: Wasn't the payment of those buildings sort of a settlement of claims that people had against the State? A. As I understand it, before the valley was ceded to California by the United States Government, there was parties that went in there and settled on it as they do on public lands, as a possessory right; they claimed there one hundred and sixty acres, just as farmers do on the outside, and there was a contest. After it was ceded to the State—Hutchings was one and Lemmon was another, and I believe Black had some claims, and some other parties that claimed that they had a right to it, and that they should be paid for the improvements, and it was in litigation for several years; I don't know, eight or ten possibly. Mr.

Hutchings can testify to that matter, as he was the principal one, and it was finally decided in favor of the State, and the Legislature, as an act of justice, passed an appropriation of \$60,000 to be divided among the parties in there, and sent a commission up expressly to do that business, and they did so.

Q. This division of this \$60,000 was not an act of the Commission at all. It was an act of the State to move those parties from that ground? A. Yes, sir; and the property then, as I understand it, came to the State as an entirety. Everything that was there afterwards was considered State property. There were claims put in at that time.

Q. This \$60,000 that the State appropriated to buying these different claimants out, it couldn't be charged that they paid that much for the buildings, could it? A. It couldn't be charged as payment for the buildings?

Q. Yes? A. What could it have been paid for? They had nothing else.

Q. They had a certain claim—one hundred and sixty acres? A. As I understood it, it was only to pay them for the improvements. The Government claimed the land, and could take it from them by force of law, but as an act of justice they did that. They were not compelled to do it; the State was not compelled to do that. I believe the Courts so decided.

Q. They thought it was a matter of justice to those parties to pay them? A. Yes, sir; that is the way I understood it.

Q. They thought they had certain rights that the State ought to observe? A. Yes, sir.

MR. TULLY: They had equitable rights? A. Yes, sir.

Q. It was to extinguish their equitable rights? A. That is the way I understand it.

Q. To extinguish their claim, whether it was land or anything? A. Everything included. It was their entire interest and right, and everything.

Q. The object of this appropriation was to extinguish their rights, whether legal or equitable, to the claims that they were setting up against the State? A. That is my judgment.

MR. HOOK: Do you know whether these parties after they received this money from the State, still insisted on having claims in the valley? A. Yes, sir.

Q. For instance, the Leidig hotel and this Anderson claim? A. The Leidig hotel didn't cut any figure. It was not built then—yes, it was built; but there was nothing allowed for that. I don't know how that was either. But there was nothing paid there, not a cent.

Q. But there were other parties that still had claims there? A. Yes, sir; next spring Mr. Hutchings was paid \$24,000 to extinguish his rights. He received his money, and afterwards went up and took possession of his property, and there was some trouble. They had to send to Mariposa, the county seat, to get the Sheriff to put him out.

Q. What year was that? A. 1885; I was there myself.

MR. TULLY: Then the Leidig property was not one of the properties the rights of which were in controversy? A. No, sir; I don't think he got \$1.

MR. HOOK: Do you know why he didn't get anything? A. No; I can't remember at this time why it was; what the reason of it was.

Q. Didn't he have as much justice in getting something as the rest? A. Well, it would appear so, certainly. I will tell you—no, I think he had not been there so long. Let me get that as I understand it. When he went there he rented the Black premises, what is known now as the Cook hotel, and Black put him out by some means; I don't know whether it

was by law or force; but at all events, he got him out; and then he went about four hundred yards below, and built this house.

Q. Did he build this house under the sanction of the Commission? A. That I can't tell you; I can't tell you; I couldn't say.

Q. Had he any right to build that on the State property, without? A. No; he had no right to do it without.

Q. If he did build it, was it his property, or the State's property? A. That would be a fine point of law. The State owns that land. If I owned one hundred and sixty acres of ground, and a man builds his house on it, and I give him legal notice and time to take it off, and he don't take it off, I claim that it is my house. That is my judgment.

Q. I was asking whether you thought he had still a right? A. I have understood—I don't know how true that is—but some of the Commissioners are here; they have the records, and they can testify to that matter.

MR. TULLY: Do you know whether or not at the time Leidig went down and built the other hotel, whether he still persisted, and set up any rights as against the State, and claimed the right to do it? A. That is a long matter to go into, and it will take time, if you will give me my own way of telling it. Leidig didn't put any more money in that house than a certain other man. He got the house started. He was running a whip-saw, and had some men working for him, and he got short, and got stopped. He got where he couldn't get any credit for his provisions, or means of any kind to get along with, and he went to Mariposa, to a friend of mine by the name of Deveney, and he borrowed \$1,600, and sold him half the premises and half of the business. Well, old man Deveney went up with him, and they went along about two years together, and it seems that they couldn't agree, and Deveney gave him a proposition: "I will either buy you out or you buy me out;" and the result was that he sold out to Leidig, and he sold out for his same \$1,600, and took a note and mortgage at that time, and the interest has run on. I was talking to the old man, and he told me that it amounted to some \$3,300, and he never got a nickel. He put in as much of the building as Leidig. He owned half of the whole thing, and he has never made any kind of a demand on the Commissioners for anything, that I know of.

MR. TULLY: Do you know whether Leidig had any lease of the property; a right of lease or permission? A. A lease from the Commissioners, do you mean?

Q. Yes; to build that house? A. I don't know. At the time he built it I didn't know anything about it. I was in the valley off and on while he was building it too, but I couldn't tell you what right he had.

Q. You don't know whether he was there as a squatter, or claiming some right of his own, or whether he went there under a lease from the Commissioners? A. No. I have been told—the records will show that in the Commissioner's office—that he went to them, and in consideration of a ten years' lease, free without pay, that he would deed the house to them. I believe that is a fact.

MR. HOOK: You don't know that of your own knowledge? A. Of my own knowledge; I never saw the paper. I have heard him testify in the Senate the other day that he did do it himself.

MR. HUTCHINGS: I have a copy of the deed.

THE WITNESS: Then it is a matter of fact that he did that, isn't it?

MR. HUTCHINGS: Yes, sir.

THE WITNESS: I thought he did. I have heard it was so; but of right he didn't have but half of it to deed away really, but he had the possession.

MR. HOOK: You stated awhile ago that you considered that they erred in judgment in tearing down those buildings? A. No, sir; I did not. I don't think there was any error. In that Cook hotel it was just simply between tearing it down and letting it fall down itself; that was all.

Q. In that part that they tore down, didn't they use the timber to build other buildings? A. Yes, sir; in the Leidig house there was some good timber.

Q. Did the building of the Stoneman House necessitate their tearing those buildings down? A. No; I don't see why it would.

Q. Could they have rented those buildings? A. Possibly. I think likely they could; no, not one of them; well, you could have rented it as long as it stood up.

Q. I mean the leading hotel particularly. That was in pretty good condition, wasn't it? A. Yes, sir; the front part was in fairly good condition. The upstairs part of the building, I don't think I have been in it for several years. I don't know anything about it. The stairway goes up on the outside, on the east end of the building. Of course it is exposed to the storms and the elements, both hot and cold, or wet, and the stairway was rickety; I noticed that, but the Commissioners, I think, had repaired them to a certain extent, and laid a new floor, some year or two ago.

Q. If the Commissioners removed them, it was simply a matter of judgment with them in removing the buildings, tearing them down? A. Yes, sir; I suppose so.

Q. For the best advantage and best interest of the State? A. I think that is what they did it for. I don't see why they could have any other motive.

MR. TULLY: Was Leidig running that hotel? A. No; he had not been there for four or five months. There was nobody in it. One of his sons was there fishing around the valley and he slept in it; that was all; two of his sons; two of his boys. The household furniture had been sold, and he and his family had been gone to Los Angeles four or five months before it was torn down.

MR. HOOK: Could this Leidig hotel have been fitted up as a cheap hotel for the accommodation of campers in the valley? A. It could, but not within two miles of where the camping ground is at present.

MR. TULLOCH: You spoke awhile ago about the claims of certain parties having been founded in equity and that they were extinguished, finally bought or extinguished. Well, now— A. I didn't say anything as to their being equitable. I said I supposed that was the view that the Legislature took of it. I don't know the opinion myself.

Q. Wasn't Liedig's claim, in your opinion, just as equitable as the balance? A. I have stated twice that I didn't know anything about it. I don't know anything about that.

Q. Then his were not extinguished then? A. No. I stated to the committee that whilst these others were extinguished at the time the Leidig building was either in course of erection or had been built, it was not in this, and I don't know for what reason.

Q. While the balance were extinguished, his were not extinguished? A. Not to my knowledge.

MR. HOOK: Did Leidig ever have any claims? A. He claimed his building when he first built it, of course.

Q. Did he present any claim officially? A. I couldn't tell you. I don't know of my own knowledge.

THE CHAIRMAN: Was any protest entered by Leidig against the destruction of that building? A. I have understood there was. I didn't see it. I

think the windows were nailed down and the doors were locked, and when they went to tear it down the Guardian opened the door. I don't know of my own knowledge. I have been told.

Q. You don't know of your own knowledge? A. I don't. I was not within a quarter of a mile of it. I heard that was so.

MR. TULLY: Have you ever heard from Leidig that they broke it open? A. I heard Leidig say so on the street, the other day, but he was further off than I was. He was in Los Angeles; I was within four hundred yards of it. He heard of it the same as I did.

MR. TULLOCH: You were within four hundred yards of it when it was done? A. Yes, sir.

Q. Then it was done? A. I say I was told it was done; I didn't see it. I think that nobody will question that it was done.

THE CHAIRMAN: Do you know of your own knowledge that they entered the premises forcibly? A. No, sir; I do not. I am saying that I do not. I have only been told these things.

MR. TULLY: Wasn't it a matter of general repute in the valley that they did take possession of that house forcibly? A. Well, as I understand it, yes, sir; that would be the term to use; that when they went down to do it, the boy, his son, forbid him from going in the house, and they said: "That is all right; that is a point of law. You have that on your side, but we are going in." That is the way it was told to me, and I don't know whether it is true.

MR. HOOK: It was simply told to you; you don't know it of your own knowledge? A. No; I say that I don't know it of my own knowledge; I have been told so.

MR. TULLY: Wasn't that the general understanding in the valley there, so far as you know? A. I think so.

Q. "The unnecessary destruction of timber in the Yosemite Valley." What do you know about that? A. I don't know that there has been any unnecessary destruction of timber. Now, there is some witnesses here, I have heard them testify about the cutting down of these young pines that grew up, that you can't go through a foot, is a destruction of timber. I want to say that I consider it is only the very thing that they ought to do; and they ought to cut down ten times as many of them.

Q. Has there been much timber cut down? A. I was going to say that I think myself that there has been some large trees cut down that ought to have been left.

Q. Why do you think they ought? A. Probably half a dozen of them. Well, there were some large trees cut down across the river, near the old Hutchings cabin—I don't know whether you would use that term, the old Hutchings cabin or Hutchings' old cabin—it amounts to the same thing—Hutchings' cabin.

MR. HOOK: Who cut those down? A. I don't know. I didn't see anybody cut them. I know they are down.

Q. How long since they were cut down? A. Three or four years.

Q. Was that cut to open up a vista or better view of the Falls? A. Yes, sir.

Q. Did it give a better view of the Falls? A. It gave a full view; you couldn't see it at all before; where the Falls came over, you could see apparently four or six feet, and now you can see right down to the bottom. The cut looks about the width of this room from the hotel.

Q. Who was the Guardian at the time they were cut down? A. I am under the impression it was Dennison; Mr. Dennison.

MR. TULLY: You say that some trees have been cut down there that you think it was not necessary to cut down? A. Yes, sir.

Q. How many? A. Well, those big oaks, there are three or four of them. I don't think there was any trees that was of any mark or any notoriety, or added to the beauty of the valley at all, and possibly these oaks did not; but when you got close to them, and wanted their shade or anything of that kind, they were very nice trees.

MR. HOOK: Where were those cut down? A. It was to open that vista. There have been some trees cut around the Stoneman House, and I am under the impression that the most of that timber that was cut around there, especially that was close to it, was to keep it from endangering the house. I know as a matter of fact that the trees that were cut up at the barn that the State built for me this summer—they cut down five pine trees, and three of them were dead at the time, for twenty or thirty feet down, and two of them were alive all the way up, and they were nice tall trees, but they were leaning, and at any time that a rainstorm came, if they blew down at all, they would blow on the premises; and they were cut down, I think very properly.

Q. Were those oak trees you speak of in the way of a good view of the hotel? A. They were right in front; you couldn't see at all; and after they were cut around, you could see right through.

Q. Does it or not give a better view of the Falls after they are cut out? A. Yes, sir; certainly; you couldn't see the Falls before at all; now you can see them complete all the way down.

MR. TULLY: A better view from where? A. From the hotel; not only from the hotel, but up and down the street up one side of the hotel above and below; but it is only within a range of one hundred and fifty or two hundred yards, I think, that you can look into that cut, but from the hotel especially.

Q. This vista that they wanted to have there was intended to give a vista from the hotel and immediately around it? A. I think it was, as much as anything else; that was where the visitors go. At that time, there were as many visitors there as any other part of the valley. I think that was the intention.

MR. HOOK: In the year 1875, could you see any of the lower part of the Yosemite Falls from the growth of timber and shrubbery? A. I couldn't remember back that far that I took any notice of it. I didn't take any notice of the matter at all until I was told they were about to be cut; then I remember of taking a look at it before and then afterwards.

Q. You were in the valley in 1875? A. I was in the valley in 1864 first, and have been in the valley every year, except 1877, since.

Q. I was in the valley in 1875. Don't you know there was quite a jungle; that it was almost impossible to see any part of the Lower Yosemite Falls? A. Yes, sir; and it was just the same until it was cut out; it was just the same, only it got greater, until this was cut out.

Q. I would like to ask you in regard to the cutting out of some timber in front of the Bridal Veil Fall. What is your opinion there; did it give a better view of those falls? A. Yes, sir; but there were only two or three old trees cut that didn't amount to anything, not worth thinking of; not to exceed three, I think, as I remember now.

MR. HUTCHINGS: Only two? A. I think it was two or three.

MR. HOOK: Are there any places in the valley where there are a great many old stumps still left where the trees were cut down? A. Yes, sir. When you cut those young pines they never sprout, and in a couple of years it is a very easy matter to pull them over; and there is two or three

acres there that have been cut of those pines, where they stand close together; they were cut off about two feet high, and the debris and stuff that was gathered around them put in piles and burned, and in another year they can go in there and hitch a horse to them and pull them out, and it leaves a nice meadow. It saves grubbing and is less expensive.

Q. You think the Commissioners did that on account of saving the expense? A. Cutting them that way?

Q. Yes? A. I don't know that they did; I never had any consultation with the Commissioners in regard to it; but if I had been doing it myself, I would have done it in the same way; I have the same experience on my ranch, down at Mariposa, and I have done it that way for years.

MR. TULLY: The next charge is: "Clearing up and plowing valley meadow land." A. Yes, there is some of that done. There has not been any of it done though, with the exception of about a fifteen-acre lot next to the Stoneman House, for their use. I don't think there has been a bit of meadow land cleared up or plowed that has not been plowed before for twelve years.

Q. How much land is there that has been plowed at any time? A. There has been, I should say—possibly at one time there were one hundred acres plowed, and now there are not over eighty.

MR. HOOK: How many acres are inclosed in fence? A. Well, that I couldn't tell you; I couldn't even guess; couldn't approximate.

MR. TULLY: You think then that there are only eighty acres of it in cultivation now? A. There are not one hundred acres; there are not to exceed eighty acres.

Q. Is that all the land that has been plowed up in the valley at any time? A. No. I told you there had been one hundred acres the stage company had, fifteen years ago; what was known as the El Capitan meadows; and they plowed about twenty acres and couldn't make it pay, and let the lease go and didn't plow any more.

Q. Who did it? A. Washburn & McCready.

Q. Had they the land leased? A. Yes, sir; leased it from the State and fenced it at their own expense. I plowed up this year what has been known heretofore as the Leidig meadow, that contains about eighteen acres. That has been plowed twice and sown. A year ago now I sowed it to timothy. I harrowed it and tried to get it in timothy, and this year I put it in wheat. There are about eighteen acres in that; and in what is known as the Harris ranch, there are forty acres. I plowed and put in forty acres. I have got about fifty-eight acres.

Q. What did you put that to? A. I put it to grain.

MR. HOOK: Was it a necessity of having this ground plowed up by the people that had leased it? A. Was it a necessity?

Q. Yes? A. I look upon it as a necessity to raise all the hay that a man can get.

Q. In the valley? A. Yes, sir; it is impossible almost to get hay in the valley at a reasonable price, and unless there is some hay raised in the valley to regulate the price, there is no telling where you would get off. In 1875 and 1876 I didn't get a ton of hay in the valley for less than \$60 a ton, and it came down to \$55 and \$50; and year before last I didn't buy any hay that I didn't pay \$47 50 for, and then couldn't get really enough to do me. I got two bales at a time, and had to turn out some carriage horses to grass. If you take ninety or one hundred head of horses in there, and keep them for seven months, you can figure how much hay it will take; and I undertake to say right here that it is impossible to get that amount of hay from the outside; and you stop raising a little hay in the valley

to govern the price, to make a little stand-off with them, and the farmers on the outside, knowing that that hay has to be used, they will pool it as well as any others, railroads or any others, and say, "Here, you can't have our hay for less than \$55 or \$60 a ton," and I should have to pay it. Now, hay forty-five miles—that is, where you have to haul it—forty-five miles from the valley, will sell at home for \$20. They don't make anything by hauling that hay in and selling it at \$45. Hay forty-five miles from the valley is worth \$20. Ten months in the year it is worth \$20. A four-horse team can't haul but a ton, and a six-horse team will haul a ton and a half. I had two six-horse teams running nearly all summer, and thirty hundred was the most hauled by a six-horse team. A man coming with a ton and a half, it takes him a week to make the trip—six days—he pays toll over and back. His hay is worth \$30 at home—a ton and a half—and when he gets into the valley, where does he get off, after paying freight and expenses? You can see, yourself, that it would be impossible to get it at any price. They don't raise, even then, at the price they would put it at, there is not enough raised within forty-five miles to do the business.

Q. Do you consider the raising or the lowering of the price of hay for campers is influenced there by people raising it? A. I think it has a tendency to keep the price down; yes, sir. Now there has been a good deal, in this matter, said about selling hay to campers for \$60 a ton. Whilst we have the privilege of doing that, under our lease, we are perfectly willing for anybody to come in and take that off of our hands that wants to. If I have to buy my hay from the outside, now, I tell you, right now, on the stand, that it will cost me \$47 50 a ton, if I don't have an opportunity to raise any. I can't buy it for that price; I am putting it now at what I pay with the competition in the valley; with hay raised there it was \$47 50. I want to say right here, that I have bought a few loads of hay for \$40—the lowest price that a ton of hay was sold in the valley for, and that is when a man wants to pay his taxes, or somebody is pushing him on a note, he will pick up a load of hay and run it in the valley, to get money to pay his taxes. Those are the facts in the case. But you go to where this camping ground is, and put a couple of tons in there, and you won't sell more than two tons in a month. I have sold as little as ten pounds to a single man, or fifteen, or twenty-five, or thirty, and forty. You keep a man to peddle it out at \$60, and where do you get off?

Q. There are sometimes you have to hold this hay over a season if you don't sell it? A. Yes, sir; I am glad to hold it over. I am always glad to have all I can to stock with in the spring. I am glad of it; but that is where the profit would be.

Q. Do the campers ever take any of your hay when you are not looking? A. Well, yes; I have had that done. I had that experience last summer. I lost about twelve hundred pounds. But that matter don't cut any figure here.

Q. Is the most of the hay raised there barley hay? A. No; there is about ten acres of timothy; twelve acres, possibly. I never measured it. It won't exceed twelve and I think ten, and the balance in grain—wheat.

MR. TULLY: The fifth charge here is, "Debarring the general public from joint and legal use of the valley." A. I don't know anything of that; I never heard of it before.

Q. Well, I understand that that would have reference to anything that had been done in the valley that tended to interrupt the free ingress and egress to the different parts of the valley, such as fencing and inclosures, and all that kind of thing? A. There is not anything. There is not a point of interest in the valley, that I know of, that a man can't go to if he

wishes. Where these inclosures are that are needed around the valley there is either turnstiles or gates. You can turn it and go through.

MR. HOOK: Is it or is it not a fact that the hay is removed before most of the campers get into the valley? A. No, sir; the campers begin to come in before you commence harvesting. Harvesting is very late in the valley. You don't cut until July.

Q. Can people get through that hay? A. There is not any camper in the world or anybody else that would want to go through that field. There is nothing there for anybody to go through. I will show you how it is. We will say the river runs down this side. The main drive or avenue, carriage drive, runs on that side, and the field is right between, and it is about the width of say, five acres across. It is more than four hundred feet; it is possibly two hundred and fifty yards. Lengthways it is longer than that, but it is about two hundred and fifty yards wide. On the lower side there is a trail goes through. It is fenced on what is called campers' ground. And there is turnstiles to go through. Anybody can walk up that side or drive up this side. There is not anybody that cares—I never heard of anybody caring to go through the field. If they wished to, and the grain was taken off, there are opportunities to go in.

Q. The object of my question is, simply to find out whether any of the freedom of the valley was curtailed by these fences? A. Not there.

MR. TULLY: How much fencing is there done there? A. You asked me just now if I knew, and I can't tell you; I wouldn't know how to make an estimate of it. There is possibly—well, I can go by my own fields and put the others in.

Q. You spoke awhile ago about what is cultivated? A. Cultivated and everything else.

Q. Cultivated and everything that is inclosed there with a fence of any kind, in the valley? A. Well, there was more land fenced in the valley some years ago than now; Bridal Veil was fenced, and now it has gone to decay and is down.

Q. How many hundred of acres? A. There are possibly five hundred acres under fence, and possibly more.

Q. Is that principally in the floor of the valley? A. Yes, sir; right in the floor of the valley.

Q. What proportion does the inclosed ground bear to the entire area of what is considered the floor of the valley? A. From one end to the other?

Q. Yes? A. Well, it don't cut much figure. The level portion of the valley?

Q. Yes; not from wall to wall, but what is considered the meadow portion or the level portion? A. Well, there is a good deal of the land that is fenced that is not exactly meadow land. In the pasture that I have fenced, the part that is next to the drive, below the Yosemite Creek, there is almost one half of that that is not meadow. Right next to the road there are big oak trees, pines, and ferns. There are not a hundred pounds of grass on an acre of it, or two acres of it.

Q. It is within the valley, what is called the floor of the valley? A. It is what we call the floor; certainly; I call it the floor of the valley. The drive runs right by the fence.

Q. What is the character of those fences; what are they built of? A. They are not very respectable fences, really. They are built of wire. Some of them are very new; some of them have been built for fifteen years, and they were built of old split pines, and put up with pine poles, and, of course, they have decayed and fallen down, and they have been propped up, and so on. You can imagine just how that would be.

Q. Any wire fences? A. Yes, sir; that and wire is all the fences there are.

MR. HOOK: Were those fences put up by the order of the Commissioners? A. Part of them were and part of them were not. Part of them were built there before there were any Commissioners in the valley. Part of Mr. Hutchings' fences are there yet, that he put up when he first went into the valley or soon afterwards. He had a meadow fenced in; well, it is on both sides of the drive that is there. He has got an orchard. I wouldn't know how many acres there is; probably one hundred acres altogether. I should say about one hundred acres, including everything that he had.

MR. HUTCHINGS: About eighty or eighty-five?

THE WITNESS: Yes, since the other was taken off.

MR. HOOK: The object of my question was this: to see whether these fences were authorized by the Commissioners to be put there or not? A. Hutchings put his up of his own motion; and on the other side of the river, below at the other hotel, there is one almost equally as large, or possibly not so large, that was put up by private parties before the Commissioners had any control of the valley at all, and they are there yet. Those two fences are almost equivalent to two thirds of it. They were put up by parties without the Commissioners having anything to say about it at all; in fact, before they had control of the valley. That was part of the premises bought when the Commissioners bought them out.

MR. TULLY: Do you consider those fences as a barrier to the free ingress and egress to the various parts of that valley that a tourist or a visitor there would like to go and see? A. I never heard of tourists complaining that they couldn't get to any part of the valley that they wanted to go to. I never heard of any such complaint.

MR. TULLOCH: Did you ever hear the campers complain? A. I have never had anything to do at the camping ground. My business has always been two miles from there.

MR. TULLY: In your judgment do you or do you not consider that those fences do operate as a barrier to the free ingress and egress to parties who might want to go and look in the hills and cañons? A. For instance the fences on the south side of the river; I should think advisable to pull them out.

Q. What I want to get at is this: whether or not those fences are not in the way and act as an obstacle to the free access and ingress and egress to all points? A. Just as I tell you, I think the fences on the south side of the valley do cut a figure of that character, to some extent.

Q. A wire fence, for instance? A. But on the other side of the river, I can't conceive where a tourist would want to go, that those fences would keep him out. When you cross the river at the Barnard hotel, you go as I just now showed you, on the trail that goes clear up to the camp ground, and there is a walk and a turnstile for you to go through. You turn to the left, where there has been so much talk about the Commissioners cutting those pines out, there are places where you can go to the Yosemite Creek. I don't believe there is any place in the valley that a tourist would want to go that is fenced; that a tourist would want to go. I never heard anybody wish to go there.

Q. If anybody wanted to go, those fences would be an obstacle? A. No; there are bars and gates to all of them. You can go to any of them.

Q. How many bars and gates and turnstiles? A. There's seven, including two gates.

Q. Are there any trails leading to those and leading to the various parts; walks? A. Yes; as I just explained to you, it turns off to the right one

way and the left on the other, on the north side of the river, and goes right through them.

MR. HOOK: Has there ever been any complaint to the Commissioners that these fences were in the way to the free enjoyment of the beauties of the valley? A. It would appear so from the testimony in this case. I didn't hear of it in the valley.

Q. Have you ever heard anything of the kind? A. Not in the valley, about any parties wanting to take the fences down, except the parties testifying.

Q. Did you ever hear of any notice being given to the Commissioners to tear those fences down? A. No; I will tell you. There was a fence put up about three years ago. I think it was not a good plan to put it up; in fact, it ought to be taken down. That is the one that is right immediately at the town, what is known as the town that runs down in front of that Italian's store. That was objectionable, and has been to all the citizens in the valley; there is no question about that; but that is the only one that ever I heard any complaint about.

Q. Was there any complaint ever sent in to the Commissioners about it? A. I don't know; but it was talked of in the valley, and I talked about it as much as anybody; just as much.

Q. If there was such a complaint, do you think the Commissioners would take it under consideration and tear the fence down? A. That I wouldn't like to say. I wouldn't like to say what a man would do, because I don't know.

Q. I mean from your knowledge of the Commissioners? A. Well, I am under the impression that the Commissioners knew that that was objectionable to the people and they didn't tear it down. That is as far as I would go.

Q. How many miles of fence do you think there are there? A. I couldn't say.

Q. Could you make an estimate—approximate? A. I wouldn't undertake to do it, because I would be as likely to get half as I would to get it all.

Q. You are not much of a farmer? A. No; although I have been farming for fifteen years, but I don't do any of it myself.

Q. You farm by proxy? A. Yes, sir; I never plowed an acre of ground in the valley myself until last summer. That is my first season breaking up a foot of ground.

Q. How much of that valley is dedicated to the use of campers? A. Well, I guess all of it, with the exception of what is fenced, and there is ample room for twice as many as comes. What we call the camp ground is at the upper end of the valley—from what is known as the Royal Arch farm to Mirror Lake, probably a distance of a mile and a half; that is known as the camp ground, but I have seen them camp from Bridal Veil Fall clear up.

MR. HOOK: About how many acres are there in that? A. I couldn't say; there is a whole lot of it; there is a mile and a half long, and it would probably be—well, some places it is not over two hundred yards wide, and some places wider; as you get near Mirror Lake it will get narrow.

Q. Plenty of ground for all the camping facilities they want? A. Yes, sir; plenty of good shade, and everything of that kind.

Q. There has no objection been made to the campers being placed in that position? A. No, not a bit of objection; in fact, they are invited to go there.

MR. TULLY: Are there not hundreds of acres in that valley to which they have not access? A. I just now stated that there was four hundred or five

hundred acres under fence; they don't have access to that; certainly, I say that; they have not got it at all; they have got all that is not fenced.

Q. Don't you think that from that part which is inclosed and under fence visitors and tourists are virtually excluded, so far as camping purposes are concerned? The portion that is inclosed virtually excludes—practically and in fact excludes campers there from camping upon the lands that are so inclosed? A. Why, certainly.

Q. And you think there are some seven hundred or eight hundred acres there? A. No, sir; I didn't say so; I wouldn't put it over five hundred.

Q. You think there are five hundred acres in the valley from which campers are excluded by reason of these fences? A. Yes, sir.

MR. HOOK: How many acres are there in the floor of the valley? A. I couldn't tell you. I never thought of such a thing—never thought to make an estimate. I couldn't even make a guess. I have heard it testified by parties that know, but I don't know.

Q. That has been testified to here? A. I have heard it testified to twice since I have been here, but I don't know myself of my own knowledge.

Q. You stated, awhile ago, that there were quite a number of acres of land that was fenced before the Commissioners ever had any charge of the valley? A. Well, Hutchings fenced his before the Commissioners had anything to do with the valley. Mr. Black had the old hotel below; he fenced his all before the Commissioners had anything to do with the valley, and the same fences are there yet.

Q. How many acres do you think were inclosed by those fences? A. By those two parties? And the Lemmon place was so. The fences that was there before the Commissioners ever had anything to do with that valley would be at least two thirds.

Q. That is under fence at present? A. Yes, sir; it would be two thirds of it.

Q. You never heard of any protest to remove those fences? A. No.

Q. That the freedom of campers or tourists in the valley was interfered with? A. No; not either of those places. Neither Hutchings or Harris or Black's have I ever heard anybody complain that they ought to take them down.

MR. TULLY: Who built the other fences? A. The State fenced them. The only fencing I did was just to make a kind of a place to catch my horses in. The river forms one side. I run from the Yosemite Creek—oh, Leidig's—there was another piece that I had not put in. That was there before the Commissioners, too.

Q. What piece was that? A. The Leidig meadow. The only place I have got is fenced since the Commissioners got control of the valley. This place was given to me. There was a string of wire fences running from the Yosemite Creek, a distance of probably six hundred yards: that is all.

MR. HOOK: Are all these places under fence leased out by the Commission? A. No, sir. The Commissioners have some for their own use, private use, to keep their stock in.

Q. What proportion of the five hundred acres is leased out by the Commissioners? A. Well, I don't know what proportion would be leased out. The Commissioners themselves only occupy one place, with, say, eight or ten acres. I don't think that the Commissioners reserve over twenty-five or thirty acres for their own use. That is the case now. But that is only now, this year. Last year it was leased. This year the Commissioners have had the Black fence that I spoke of. That has all reverted to the Commissioners. It is not leased to anybody. In fact the fence is half down.

Q. How much of it in the valley is leased? A. Well, I don't know how to answer the question. It is all leased except what the Commissioners have for their own use; it is all leased except that.

Q. I understood you to say there were some parts that were not leased? A. No.

MR. TULLY: Have you not leased a portion of that valley from the Commissioners? A. Yes, sir.

Q. Is that inclosed? A. All this land that I have been telling you about that I have, I leased from the Commissioners.

Q. Who controls now, and who leases, if it is leased, the lands that are now inclosed, outside of what the Commissioners themselves use? A. Well, Mr. Cook has a place at his place for his cows; fifteen acres, I think, there is in it, probably sixteen. Mr. Barnard has a place for his cows. He has got between eighty and one hundred acres. Mr. Leidig has a place for his. I don't know how many acres there was in it. Of course, that is abandoned now, and the fences all down. Mr. Cook, when he was down at his other hotel, had a place there with, say fifty or sixty acres in. That is abandoned now; it is not leased to any one. The Leidig place is not leased to any one.

Q. Have you not a portion leased yourself? A. Yes, sir; I am telling you who the parties are who lease. Then I have the Royal Arch farm, or the old Harris place and the Leidig meadow, on the north side of the river. That is all the leased land that I know of. No, the butcher has a place leased.

MR. HOOK: Do you know how the Commissioners act in regard to the leases; do they take the most favorable terms that they can receive, or do they consider the character of the man? A. I will tell you just how I get my leases. I go in just as a competitor. I never have had anything that I didn't have to bid for, and do it in writing, and if I didn't bid the highest bid I didn't get anything. I have always had to bid for it.

Q. You have always had to bid the highest? A. Yes, sir; the Commissioners have never done me a favor outside of or more than they would you. You could put in a bid just the same as anybody else. I always had competition. I never went in and bid for the saddle train or anything else that there was not bids against me, and I believe it is not possible for anybody to go and say they bid more than me. I think I bid higher than any of them, every time, and the records will show I am paying the Commissioners now \$1,500 a year; \$1,200 for the privilege of running the saddle train and \$300 for the Harris ranch.

Q. Was your lease cut down on a part of your property? A. Yes, sir. They didn't give me the orchard, which contained about eight or ten acres; a very nice orchard, too. You can pick one hundred barrels of apples a year out of it. They took that out of the Harris privilege, and the house burned down, and I lost a great deal of stuff in it; I don't know how much. I lost a lot of grain, and rope for baling hay, and tools, etc.; I don't know; household furniture. I bought all the household furniture just as it stood. He didn't take anything away but his clothing. That was all in the house, and it was all burned up together, and, in that view of the matter, they reduced it for this year and the next, and at the expiration of that time it goes at \$1,750, instead of \$1,500. It has also been testified to by a number of witnesses that I am only paying \$250 for it. It is not true. I am paying \$300 for it. The record shows it.

Q. In reducing that rent, was it or was it not an act of friendship to you, an act of special privilege? Was it keeping anybody else out? A. No; it was a simple act of justice; that is what it was, a simple act of justice—

the same as an Assessor comes around and finds you on your ranch, with your house and furniture, and he assesses you for it; when it comes to paying taxes, you can go before the Board of Supervisors and tell them that you have been burned out, and show them that that is the case, and they will take the taxes off; and it is a similar thing up there. They will remit your taxes. They do it every year.

Q. You considered it a greater benefit when the houses were there than afterwards when they were burned off? A. As a matter of course. You can't live without a house. They didn't do it through any act of friendship or kindness or anything of that kind; they did it as a matter of justice.

MR. TULLY: You get your lease through competition; that is, they are put up to the highest bidder? A. Yes, sir.

Q. Those are written leases? A. Yes, sir.

Q. Is there anything in those leases in the nature of an exclusive privilege? A. No. I never had one in my life.

Q. Are there any terms in there by which you are enabled to bar out or prevent others from competing in there for the business of the valley? A. In my lease?

Q. Yes? A. No, sir; there is not a word of it. If I had known this thing would have occurred, I would have brought my lease.

Q. There is no condition in your lease that gives you an advantage over an outsider? A. No, sir.

Q. Except the fact that it gives you control of the property? A. No; it gives me a privilege to do business in the valley.

MR. HOOK: You would not have any more privilege, getting a lease, than an outsider? A. The Commissioners have a perfect right to meet to-morrow and give somebody a privilege in there. They can do that if they wish. I have no way to help myself.

Q. You said that you had to make the highest bid, or else anybody on the outside of the valley could come in and get one of those leases as quick as you? A. I did. Up to the last two years there were three or four of us doing business there, and when there was competition that way we would bid for the lease, and we would run it up to where we had to give \$1,000; and finally, one year we bid \$300 apiece, and put in bids separately. It was just the same thing. We run right together just as soon as we got the bids. We paid \$300 apiece, and every one pooled it. That has been done always in the valley, when there was competition there; we had quite an experience in that way. You have no doubt crossed the ferry down here at the foot of Market Street, and went out to get in a car. There was one year there it was just a fac simile. They would meet the stages, the runners would, at Bridal Veil; that is three miles below; they would stop there to water their horses, and they would climb in and out, pulling and hauling at the passengers. When they would drive to the hotel it was the same thing, and when they would go into lunch. Of course the hotel men stopped that after awhile; they would not allow them to talk to them at lunch, and bother the guests; but it was a perfect pandemonium; each one trying to get as much as he could. I have let horses in the valley for 50 cents a day. You can see where men would get off at that business; and I have known parties to do it for 2 bits, but it would be for only a few weeks, and they would go home—somebody would get mad, and it was disagreeable to every one. People are better satisfied now, and I will tell you why I know that that is the case. The Commissioners have a schedule of prices, and the rules and regulations are printed in a nice shape and framed; and they are put up at every hotel, and covered with a glass, and

one can read just what he wants exactly; as the Commissioners have stated themselves. We have nothing to do with that. And when any one wants to go anywhere, they can go right there and see the prices, and we can't charge a cent more; if we do, we forfeit our lease; we can't take any more than that. But to show that the plan now is better than the other, three years ago—if the Guardian is here, he was here last night, I don't know whether he is here now or not; he will testify before this committee that there were not less than fifteen or twenty regularly written complaints put in from the different parties, that they didn't get fairly treated. Since the business has been running as it is now, the Guardian will tell you there is not a single one in the two years. There has not been a single complaint made at the office in two years against us. We have not met with an accident. We have kept the kind of stock that is safe. We have supervised the business ourselves, and looked after it, and we never have any complaints.

MR. CHAPMAN: Is it not a matter of fact that fully three fourths of all the fencing in the valley was put there before the Commissioners had any control of the valley? A. I have just stated that, exactly. I said more than two thirds.

Q. Isn't it a fact that you have now between twenty-five and thirty miles of roadway, with seven crossings of the river in the valley? A. Yes, sir; that is a fact. One can go almost any place they wish. You can get into a carriage, and ride through the valley a distance of twenty-five miles, and cross the river in seven different places, and never come in contact with a fence.

MR. TULLY: You have carriages to hire there in the valley, have you not; to let? A. Yes, sir.

Q. The more carriage driving is done there, and the less pedestrian exercise, the better it is for the man who has the carriages, is it not? A. It would be, provided they would ride in carriages; yes, sir. That would be natural, the same as it would be in San Francisco.

Q. Don't you think a tourist there would naturally prefer to go in a carriage and go on your drive, rather than to go and climb through those fences? A. He can walk without climbing the fences. The carriage drive does not climb any. He can do the same that the carriage drive does, without coming in contact with a fence anywhere.

MR. CHAPMAN: Walking is not very good there, is it? A. It is sandy.

MR. TULLY: That is what I am trying to get at, whether there ought not to be more walking or more facilities for walking? A. The Commissioners don't prohibit walking. Of course there isn't trails made all through the valley for that purpose.

Q. Is it not a fact that there are more carriage drives than foot trails? A. There is simply a carriage drive around the valley.

Q. There are more facilities for seeing the valley in carriages than on foot? A. As long as I have been a resident of the valley, if you were to send me up there to make a foot path I wouldn't know where to make one that would be interesting to visitors, except the ones that are made. I wouldn't know where to make a new one. I don't know where there is one now that would be considered a matter of necessity or benefit.

MR. CHAPMAN: Hasn't that been a matter of some consideration in the matter of placing turnstiles and hand-gates? A. Yes, sir. I said there were seven of them already.

MR. HOOK: If these fences were removed, do you think that pedestrians would walk through these inclosures? A. I don't believe they would walk

a bit further than they do now; not a particle. I don't believe the fences keep them from going anywhere they want to.

Q. Is it or is it not a fact that there is a great deal of undergrowth, and weeds, and grass, and at the time that most tourists come into the valley it is damp a great deal of the day, this grass? A. It is a fact that there is undergrowth there for miles that ought not to be there—these young pines. Anybody that has been in California any number of years knows very well that these young pines will thicket a country, if allowed to do so.

Q. I didn't mean so much about the pines as about the grass and ferns? A. There isn't any grass to keep anybody away from anything, but there is plenty of ferns and briers and young pines. In 1864, when I went to the valley first, you could stand on one side and look clear across to the wall on the other side in twenty places where you can't see it now; and these growths of cottonwoods that have been spoken about being cut down, there wasn't any trace of them at all, and you could look right across the river and along the banks of the river. Now they have grown up with cottonwood and willows until they are all obstructed, and if that place belonged to you the very first thing you would do with it, as a business man, you would put the axe in there and clean it up. I am sure of it, I would if it were mine.

MR. TULLY: Don't you think if that undergrowth was trimmed out and a little more money expended there in cleaning it out and removing this undergrowth that is in the way of tourists or pedestrians, don't you think it would offer them much greater inducement to go over portions of the valley that they don't go over now? A. I don't think at all; I know that as a fact. It is a positive fact.

Q. Don't you think that if it was nicely and handsomely trimmed out, that there would be a great many persons who might desire to go there who still would find these fences an obstacle—supposing it was all opened up and cleared out nicely underneath, opening up free access to it? A. About the fences being an obstacle, it is just this way, and I can explain it by going from here to the hotel that you are stopping at. For instance, if that block was not built up with buildings, you could go catacorner across and save that much distance; whereas you have to go up to the corner; and it is the same way with the fences. Instead of going through them you would have to go on to the corner. A public road generally runs on the section line; you can't go through a man's fields. I don't see that the fences on the north side of the river obstruct anything. I never heard of any tourists that came into the valley in the last twelve years ever complain that the fences on the north side of the valley was in their way one particle. On the south side, as I said before—

Q. That city is not laid out in squares and blocks, and as a park it is supposed generally to be open, and that the proper use of it is to make it accessible from all parts and to all parts. That is the difference between that and going catacornered across the street? A. I don't consider that the fences on the north side of the river are in anybody's way.

Q. Those on any other side? A. On the south side, as I testified a half an hour or an hour ago, it would be my judgment, if it was mine, I would take the old fence down there at the Black hotel; I would have it taken down. In fact, it is half taken down now—decayed.

Q. Do you think that old decayed fence adds anything to the beauty and attractiveness of the valley? A. No; that detracts from the beauties of the valley.

Q. Would you consider, if you were there as a Commissioner, that it was

best to remove those unsightly fences? A. I think it would be a good idea; certainly.

Q. The duties devolving upon this commission are not simply to inquire about what has been done, but to suggest, from the information that we gather from those who are acquainted with the valley, what would be the better plan to suggest in the future; and I ask many of these questions with a view to that fact; not to convict anybody of anything? A. As I said before, I think the fences on the south side of the valley—

Q. We want to suggest anything that would tend to better the management, or the convenience of tourists? A. The fences on the north side of the valley are not in anybody's way. All the business houses are on the south side of the valley. They are not exactly an ornament.

Q. It may be possible that we will want to recommend the removal of all those fences. My questions are not directed for the purpose of criminalizing anybody, but it is simply to enable us to suggest anything? A. It would work a hardship to remove all the fences in that valley. As a matter of fact, there cannot anybody go in there and let horses for what they are letting them now and have to haul in their feed. It is an impossibility to do it at a low rate. But that is another matter.

Q. Is it not a fact that there is not a park in the world but what they have fences and barriers in, some way or other; to keep them from traveling— A. I have never been in one yet but what they had walks—places for people to go—and they would have their notices up: "You must keep off the grass," and "Don't touch the trees." There isn't anything of that kind in the valley. You can go and touch anything that you like.

MR. TULLY: Is it not a fact that those notices are placed in front of nice swards and flowers? A. Yes, sir.

Q. And not in front of a thicket? A. There isn't any notice of that kind in the valley, that I ever saw, and they can go anywhere they please.

MR. HOOK: Do you think the Commissioners, if they had a sufficient amount of money appropriated, would remove all this shrubbery and undergrowth out of the valley? A. I believe they would. They have been trying to do it, and they have done some of it. They have commenced now, and in several cases they have been at work and it has been criticised by some parties—some parties that I heard testifying criticised it more than anybody else. Most of the residents of the valley think that it is a proper thing to do, and it is necessary. They went to work in there on the camp ground and cleared up four or five acres. The only trouble is, they have not cut out enough. The young pines grow up very thick. They ought to go and cut out every third tree.

Q. The question is this: if there was a sufficient amount of money appropriated by the Legislature, don't you think they would remove all this undergrowth? A. That is what I am telling you.

Q. Burn the bark and dead limbs? A. In answer to that, I said yes, I thought they would, and that they had commenced it already. That was my answer; that they had commenced it already. If they had the means I think that they would do it all. I think it would be a very proper thing to do. In my judgment, it would.

MR. TULLY: "Holding annual meetings with closed doors, in violation of State law." A. Well, I remember once that the Commissioners—in the first place, when the Commissioners met there in the spring, the first day that they met, the doors were open. The time I speak of, they had closed doors once for an hour and a half, and everybody that wanted to put in an application, or had a grievance, or anything of that kind, they insisted on it being put in writing. Everybody who wants anything, goes in there and

hands their papers to the Guardian or Secretary, and that matter will take up until the dinner hour. And on that day that has been spoken of, that they held their secret session, I think as a matter of fact, they went in the back room and sat there for an hour and a half, probably, before they came out in the front room. I am not sure but what the front doors were closed up and the parties sat there on the porch until it was opened; but I never remember of it being done but once. Whether they were in session or not, I couldn't tell you. I couldn't swear that they were in session, but they were in there.

Q. When was that? A. Some years ago.

Q. There is any amount of evidence that it was but once. I want to identify it if it is the same instance? A. It was four or five years ago. I couldn't say just what year it was.

Q. Do you know of any other instance? A. No; I don't remember any other time; never when I was there. They may have had it when I was not there. That was the only time that I remember. I happened to go there that day and there was several parties on the porch waiting, and I sat there and waited myself until the doors were opened. But whether they were holding a meeting in reference to Yosemite matters or not I couldn't tell you; they were in there.

Mr. Hook: Do you think that that time that they held that secret meeting, or that meeting in there, that it was with any object of shutting anybody out? A. Oh, no; I think not; I never heard of anything of the kind.

Q. It was not done as a star chamber proceeding? A. No; and it was not considered so then; not by the parties who were in there; not that I ever heard of. I was as much interested in it as anybody and I took no exception to it. There was four or five of us bidding for the same business that I was bidding for at that same meeting; at least four.

Q. Was it or not their object to keep the doors closed, to keep the people from interfering with their business? A. As a matter of fact, when this committee gets through taking this evidence, you are not going to throw your doors open and invite everybody in while you are consulting on the matter and taking a vote.

Mr. TULLY: I understand that they were in executive session? A. It was just the same exactly as when you get through taking the evidence in this case and you want to take a vote on the result, you won't throw the doors open and invite Sacramento to come in and hear you. When the meeting met in the morning, they took in these papers, and everybody could come in and did do it. I went in with a paper myself, and they talked it over among themselves, I presume. I think it was proper.

Mr. TULLY: The evidence on that head is cumulative, if it has reference to the same case.

Mr. Hook: I want to find out whether it was any star-chamber proceeding? A. No, sir; I never heard anything like that. It just happened as I tell you. It was just the same as you will act in this case, when you get through; precisely.

Mr. TULLY: "Violation of State laws regarding the granting of exclusive privileges in the valley?" A. I don't know anything of the kind.

Q. You don't know of any exclusive privileges? A. I don't believe there is a man in the valley that ever had an exclusive privilege of any kind or description.

Q. What is the manner of granting those privileges? You have answered that once, but it was not in answer to this question. What is the manner of letting out any privilege? A. Well, you bid for it and they grant it by

a vote of the Commission, and they issue a lease. That is all I know about it. I have got mine.

Q. They advertise for bids? A. No, sir; they don't advertise. It is understood by all the parties that has been in the valley for any length of time and the outsiders, any that want it. I don't know but what they have been advertising lately; I won't be sure about that. I think they advertised, didn't they?

Q. When they do lease those privileges, whatever they are—the leasing of a privilege to carry on a business there, for instance, yours, to run a saddle train—they are first offered to competition? A. Yes, sir.

Q. And the highest bidder gets it? A. Yes, sir.

Q. I have asked you whether they were exclusive privileges in terms, and you have answered they are not? A. They are not.

Q. Do those privileges, such as they are, in their operation, do they operate to exclude—the effect of granting those privileges to certain parties, does it exclude the granting of similar privileges to other parties? A. No. I answered that before. It is the same thing.

MR. HOOK: Is it or is it not a fact that they advertise their June meeting in Mariposa, Tuolumne, and several other papers? A. I had that impression, and I think that I have seen the advertisement in the paper, but I am not sure of it. I think they did. I think that I have seen it in the Mariposa paper, that the June meeting—when they would meet. I am under the impression I saw it there, but I am not positive.

Q. If they don't advertise, it is generally known when they will come? A. Yes, sir; I never heard any complaint.

Q. It is generally known that they will come in there in June and hold a meeting? A. Yes, sir.

MR. CHAPMAN: Isn't it a State law that we are compelled to meet there on the first Wednesday in June? A. Yes, sir.

Q. Everybody must know it, that the Commissioners meet on the first Wednesday in June? A. There has never been complaints, to my knowledge, of anybody not knowing it. I never heard of anything.

MR. TULLY: "Reduction of rentals to the prejudice of the State's income?" A. Well, I presume that is intended to apply to the reduction of the rent on my place, and I explained that matter. I don't know of anything of that kind.

Q. You have testified that there was a reduction in your case? A. Yes, sir.

Q. Given the reasons why? A. I gave the reasons why; yes, sir.

Q. Do you know of any other reductions having been made? A. No. Oh, I know in some years past—yes, certainly; the rent for the hotels was reduced at one or two different times, but that was some years ago. I don't know how much or how little. I have been told that they were reduced five, or six, or eight years ago.

Q. Were they reduced in favor of any particular party to the detriment of other parties who held similar leases for similar purposes? A. No; I think not.

Q. "Failure to recognize their own contracts?" A. I never heard of it.

Q. Did you ever hear of any instance in which parties had worked or made contracts with them to do work in which they had refused to pay for the work after it was performed? A. I have never heard anything, except what I have heard in testimony, by sitting and listening to the testimony. I have heard parties testify to such things, but of my own knowledge I know nothing of it.

Q. Did you ever hear that this man Anderson had worked on that trail,

and that he was refused compensation for his labor? A. I have heard it testified here two or three times, but of my own knowledge I don't know anything about it.

Q. Do you know anything about it of your own knowledge? A. Nothing at all.

Q. You don't? A. No, sir.

Q. Don't know of any other instance where rentals have been reduced?

A. No; I don't believe I do, except my own.

Q. Did you ever hear anything about this man Robinson, the artist? A. Oh, well, that was only a matter of \$20. Yes, they reduced him from \$20 to \$1 this last June. I had forgotten that. His rental was \$20, and they reduced it to \$1.

MR. TULLOCH: When did they do that? A. Last June.

Q. Did they do it before that? A. They did it last June; that is the only time I know of their having done it. I was present when that was done; I know that was done.

MR. TULLY: Do you consider that the reduction of that rental was to the prejudice of the State's income? A. Well, if any of it was that was.

MR. WASHBURN: Didn't Mr. Hill build his house, and didn't Mr. Robinson have his house built for him? A. That matter of the artist's studio, Mr. Hill, some five or six or eight years ago—I don't know just how long it was—made an application to the Commissioners for the privilege of the ground to put a studio on, and he put it on at his own expense. They granted him the privilege at a rental of \$1, just to make the matter legal, for the papers, and he got his equipments from San Francisco or Oakland, and he put him up a studio that cost him \$800, and he occupied it a part of two seasons. He has not been in the valley—he has not been inside of that house, I don't think—for four years. I pass it four or five times a day every day in my life, when I am in the valley. He built it at his own expense; the first cost was \$800. It is right in the track of where the wind comes, more than any other place; it has been blown off the foundation three times; it has been blown off three winters—off the underpinning; it is shoved forward between three and four feet. It is not high up from the ground, and it blows over, and he goes to work and screws it up with a jackscrew, and gets it all lifted up, and the next spring it is down again. It broke his windows and racked it considerable the last time, but the State was not at a dollar's expense in that.

MR. HOOK: Did Robinson put up his own studio? A. No, sir.

Q. Was he occupying the State's property? A. Yes, sir.

Q. This other property belonged to Mr. Hill? A. Yes, sir; individually.

Q. Did Mr. Hill turn this property over to the State? A. I don't know whether he did or not.

Q. Did he not do it last June? A. I think the understanding with him, when he got his permission to put it on the ground, was that he would occupy it as a studio while he wanted to, and it would revert to the State when he didn't want it.

Q. What is the reason Mr. Hill has not been in the valley for four years? A. I don't know. He has been in. He comes in there, but he has not been doing any business in there.

Q. Do you know why he does not occupy the building? A. No; I do not.

MR. TULLY: Do you know whether the State has control of that building; whether he turned it over to the State or not? A. I don't know; it is my impression, however, that the understanding was with the Commission, that when he got through using the building he would turn it over to

the State then, as State property. I don't think he claims the building, to sell it to anybody, or anything of that kind. It is only for his own use.

MR. TRUMAN: He surrendered it? A. I didn't know that. I understood that that was the contract; that he would.

MR. CHAPMAN: I would ask Mr. Coffman if he has not been in a position to hear of any complaints of failure on the part of Commissioners to keep their contracts, if such was the case? A. Well, I have been in the valley, as I said before, for thirteen or fourteen years, and I have failed to hear of anything that the Commissioners didn't keep their contract with.

MR. TULLY: We asked you with regard to Anderson, and the building of that trail? A. As I told you before, of my own knowledge, I don't know anything about it. I have heard several people speaking about the matter say the Commissioners promised to do so and so, and they didn't do it. I can hear those kind of stories on the street every day about other people; but of my own knowledge, I don't know anything about it. If I don't know it, I can't tell it.

Q. "Withholding from citizens facts concerning the acceptance of the Stoneman House by the State, and illegally leasing the same." A. Well, now, I was present in San Francisco when that thing was done, and I pledge you my word I couldn't tell you what the bids of any parties were. I don't know to-day what Cook's first bid was. I know what his last was, from the fact that it was just \$1,200, to cover the State part of it for the hotel; but the first day's bids I couldn't tell you what either of them was.

Q. \$1,200, to cover the interest on the capital? A. Yes, sir; they couldn't do it for any less; but what the bid was I couldn't tell you; but that is a matter of record, and that would be the proper place to get it; I couldn't tell you; I don't know.

Q. Do you know whether Judge Grant put in two bids? A. He put in one bid; and put in another one with a dummy; this was the same man bidding for him.

Q. You don't know of your own knowledge whether his bids were higher than the others or not? A. No, I don't; I have heard a good deal of talk about it, but I couldn't tell you now, candidly, how much the bids were at the first meeting.

Q. Do you know anything of your own knowledge? A. I saw it in print and read it, but I can't remember what it was.

Q. You don't know anything about those bids of your own knowledge? A. No.

Q. You simply heard those statements? A. I have heard. I read in the paper the next morning the proceedings, but it has slipped my memory; I can't remember; I know there was a good deal of talk about it; I was in the city at the time the thing was let.

Q. Are there any facts connected with that transaction that you of your knowledge can say that you know have been withheld from the public? A. No, sir; not of my own knowledge I don't know of a thing.

Q. That is what this question relates to: "Withholding from citizens facts concerning the acceptance of the Stoneman House by the State and illegally leasing the same?" A. I don't know anything about that.

Q. "Rendering useless the district school of Yosemite Valley?" A. Well, I don't understand what that implies.

Q. By some act of theirs, that they have done something or omitted to do something they should have done, the result of which was the breaking up of the school? A. I understand that is not true in any respect. The school has run right along. There has never been anything of the kind. The school teacher was born and raised in my town. I know her just as

well as any one. She has taught in there for three years, and last fall she had a bid to go to Los Angeles, some educational institution that she could get a situation in, and if she didn't go then, she would lose it, and I think she left about ten or twelve days before the time was up; but there is a teacher employed now, which I know for a fact, to go in and commence in April.

Q. Was her leaving attributable to anything the Commissioners did or did not do? A. No, sir; and the school census—she took them herself; and it only takes sixteen scholars there, I believe, to equip a school district, and I think she had twenty-two. I know it has been stated that because Harris took his children out and Leidig took his out, that the school had to close, and the Commissioners were the fault of that; but it is not true.

Q. Harris had a number of children at the school, and he moved out of the valley and took his children out? A. Yes, sir; he had three or four.

Q. Do you know whether he was ordered out of the valley? A. No; I have heard him say myself many a time that he would like to get out, and was desirous and anxious even to go.

Q. You have never heard that he was expelled from the valley by the Commissioners? A. No.

Q. Or that any act of the Commissioners tended directly or indirectly to drive him out? A. No. In fact, I know he was not.

MR. HOOK: You think there was no effort made by the Commissioners to shut up the public school? A. No. I would as soon think the Commissioners would do any other act of meanness in the world as they would to do that. I don't think they ever thought of such a thing until they saw it in these charges. I am sure that nobody in the valley ever thought of it.

Q. "Neglect of public roads and trails within the grant?" A. I know of no such thing being so.

Q. Have you seen the roads there since you have been driving at any time in the condition— A. It is just like any other roads. Now and then there will be a bad place in the road, and the same way on the trails; and when my carriages were running, the Guardian always told me—Hutchings told me the same when he was Guardian, and Dennison, and McCord—that when my drivers reported that the roads were bad, to come and report at the office and they will have them fixed; and for my guides to do the same, and in every case they have gone and attended to it. I have no fault to find with them, so far as I am individually concerned. I don't know that anybody else complained of it.

Q. You have every opportunity for knowing that fact if it were so? A. Yes, sir; it is done just as I tell you. Whenever any of my guides or drivers report to the stable, at the office, that there is anything the matter with a trail or road, I go to the Guardian's office and tell him where it is, and he sends men up and has it fixed, whether it is on the trail or road.

Q. Do you know of any case in which, after such information, they have neglected to do what was their duty? A. I don't know any instance of it.

Q. Do you know any instance on the trails? A. Some years ago I thought the snow didn't get out of Glacier Point as soon as it ought to; but it was let by contract to McCauley, and it was McCauley's fault; and they were so late afterwards—it was across a stream, and the snow had been very severe that winter, and, of course, the stream came down and washed out a tunnel underneath it, probably twenty feet across, and as many feet high, and the snow had gone over. He cleaned out the trail in a good many places; but I was afraid to put my horses over it, and insisted I wouldn't do it, and I wanted them to throw it out, and we were later that year than ever. It was not the Commissioners' fault, but McCauley's.

He had contracted for \$300 to take care of the trail. I believe we didn't get that out until late in the season.

Q. Was it not the duty of the Commissioners to see that McCauley did it? A. I spoke to Hutchings—I think he was Guardian—and I spoke to him about the matter, and my recollection is that Hutchings told me it would be perfectly safe to go over the snow, but I was afraid of it.

Q. Was that on one of the roads or trails? A. That was on the trail to Glacier Point.

Q. Do you know of any other instance? A. No, I don't. I don't speak of that as being of any consequence. I only speak of it as being a matter of fact. I didn't speak of it to make any point in this case.

Q. It has been stated here, Mr. Coffman, that on those trails leading up and down the mountains there that there have been poles laid across the road, which would occasion some embarrassment or inconvenience in going up or down? State what you know about that? A. They do that in the winter to turn the water. The trails in places are very steep, and they will get a pole and put it across. If they don't the water will run right down the trail. They have to do something of that kind. The water on the upper side will come down. We have rains pretty late in the season. I think some of those poles has been left in longer than was necessary, but I don't see anything to find fault with such a small matter. I would not want to testify about such a small matter. I have told them about that myself, and they would go and take them out.

Q. Did it occasion any serious embarrassment or inconvenience? A. Oh, no; there was some of them, as I tell you, that was in the way. Now, in going to the Cascades, there was three or four of them one season. I think Dennison was Guardian then, and I spoke to him three or four times before I got them out. But such matters as that are such small matters that I didn't think about noticing it. Yes, sir; that is a fact. It was not willful neglect though.

MR. HOOK: In neglecting to take those poles out, or anything of that kind, or in fixing the road, the Commissioners, if they were notified, would remove the Guardian? A. They would order it done at once. I have not a doubt of that.

MR. TULLY: It was a neglect—if it was a neglect—rather of the Guardian than the Commissioners? A. Yes, sir; because there was not any Commissioners present to know anything about it.

MR. HOOK: I would like to ask how often do the Commissioners come to the valley? A. Once a year; that is to say, they have one regular meeting. Sometimes they come up again in the fall. Some of them were up three times last year, or year before last. Some of them were up twice last year, and I think they were up twice before.

Q. All complaints must be made to the office in San Francisco? A. No; you can go to the Guardian's office, and it will go to San Francisco as quick as the stage can go.

Q. Any complaint is made to the Guardian, and that is forwarded to the Commissioners? A. I think they do; I think that is the rule; I think he does; isn't that so?

MR. TRUMAN: If it involves any expense; if not, he is clothed with greater power himself to repair such things himself.

MR. TULLY: How often does the executive committee meet there? A. They don't meet at all there; the executive committee meets in San Francisco.

Q. Then they transact their business, so far as the valley is concerned—the valley proper—they transact that through the Guardian? A. Yes, sir.

Q. The Guardian is responsible to the Commission for his position there? A. Yes, sir; they can remove him at a minute's notice.

Q. Do you know of any complaints that have ever been lodged against any of those Guardians for neglect of duty that were not properly attended to by the Commission; lodged with the Commissioners, with regard to the neglect of duty of the Guardian, that was not attended to? A. No; I don't know anything of the kind.

Q. Do you know of any complaints at all having been lodged with the Commissioners with regard to neglect of duty on the part of the Guardian? A. I don't know that there were; not to my knowledge.

MR. TRUMAN: May I make one statement? The executive committee cannot remove the Guardian; it must be the Board of Commissioners.

MR. TULLY: I asked if it would be reported to the Commissioners and not to the executive committee? A. I don't know that.

MR. TRUMAN: They have all other power, but they can't remove a Guardian. They can censure him every day, if they want to.

MR. TULLY: My question was, if there had been any complaint lodged with the Commission and not with the executive committee? A. No; I don't know of any.

Q. "Employment of State labor upon work for private parties." Do you know any instance of that kind, where labor paid for by the State——? A. I don't know of a single instance of the kind, but if the committee will allow me, I will explain what I think that was intended to cover. That thing was gotten up—I know how that was gotten up—it was intended to apply to the building that the State put up for me. Now then, I will show this committee that what they did for me was a matter of necessity, and that I couldn't do it myself under any circumstances, because it was State property, and I couldn't build on it, and that somebody had to build. I am paying them \$1,500 a year rent, more than anybody else in the valley, and I was entitled to some consideration; and I had a little bit of a pig pen barn that would hold about twenty-two horses; that is all I have ever had there; and after the Stoneman House was opened and these other buildings torn down, I was over two miles from the hotel, two full miles. The result was that when the stage would come in past my door and go two miles up the valley to the hotel, I would have to send an agent along after them to inquire of passengers if they wanted anything; say, for instance, they wanted to go to Glacier Point, the agent would have to come back to the stable, and I have to travel four miles to get them. Then I saddle my horses and take them up there to the hotel and take them back. Then the horses have gone four miles before they start to Glacier Point, which is still below me. As a matter of fact, any man that has got any business tact or intelligence will see at once that a livery business can not be run two miles from where you are doing it. It was a matter of necessity. I take the ground that it was just as much a matter of necessity for the Commissioners to look after the tourist, for his livery, as it is for his staging and board; but such a thing has not been the case. The hotel people think, when they furnish him his grub and bed, he don't need anything else; but it is a mistake. I contend that that was a necessary work and that it was not a private individual. I am not a private individual any more than the hotel men are; but I did need that stable up there, and I couldn't do the business without it. Now, that causes that charge there. As a matter of fact they did build me a stable adjacent or close to the Stoneman House, and that is where they came from. I don't know of any work having been done for a private individual. I pay them \$1,500 a year.

Q. You were one of the lessees, and they did it at your suggestion? A.

Yes, sir; they had promised me for three years to build that barn, as soon as they were financially able, and it seems that it was the case this year, and they saw the disadvantage I was working under, and they built it. I have been eight years there with my carriages. I come in in the month of April, the first of April. Of course, when I go out in the spring, I take my wagons apart, and pack them in; seven wagons. Well, I can't get in but five; I put two in an old shed, and take one with me. In April I have to take them in. I put the wagons out, and they get the snow and sleet, and sunshine and rain, until the first of November. They built me a little wagon shed, and that is all there is about it.

Q. They built that for you as one of the lessees? A. Yes, sir. It is State property; it does not belong to me.

Q. The building that they put there didn't belong to private individuals? A. No. I have no more interest in it than you have, or any other taxpayer.

Q. They belong to the State? A. Yes, sir. There has been no work done by them for private individuals that I know of. That is what that was intended to cover. If there is any man on the committee that thinks a livery business can be run two miles from the business, I don't see how it can be done.

Q. That is the only instance that you know of? A. That is the only one. That is what that is intended to cover. I don't know of any other.

Q. They built that barn there as a convenience to you to enable you to carry on the business for which you had leased the property? A. Yes, sir. I assisted the Commissioners to a very great extent to get them to do that too, and whilst it will all be State property, and not a cent will come to me, I hauled the lumber. I filled up the stable to the level at my own expense. The stable is built so it fronted on a kind of an arroyo or a ravine, and I graded that up and filled it in, and I built my own saddle house, forty feet by ten, and put up my own gates. I must have spent \$400 or \$500. But that is my own affair. It belongs to the State, but I did it.

Q. It was an accessory to your business? A. Yes, sir; I couldn't do business without it.

MR. CHAPMAN: As a matter of fact, Mr. Coffman, were you not told that they only had about so much money, and any assistance that you might render would be very much appreciated? A. Yes, sir. I have just stated that I did stand in and help; yes, sir.

Q. And in laying down the water pipe. You have heard something of water pipe since you have been here? A. The water pipe was not laid exclusively for me.

Q. I was going to ask you if we did not put a hydrant in the campers' ground in order to accommodate the campers? A. Certainly; right in the center of the campers' ground there is a hydrant comes up, the same as it does at my place. I didn't get the benefit of that any more than did the campers.

MR. TRUMAN: Didn't I write to the Guardian and tell him to inform you that if you did spend any money you would not get it back? A. Yes, sir; he told me if I did it I would do it at my own expense. It was all right, and I did do what I have explained. I put up my own house, a building forty feet by ten, and I filled up the stable from eight inches to fifteen inches deep, and I graded all the street in front, and put up my own gates and everything at my own expense.

MR. TULLY: Does the State get the benefit of it? A. Yes, sir; I am pay-

ing \$1,500 to use the property; but I was satisfied; I would rather do that than be two miles away. It was to get up where I could do the business.

MR. HOOK: Is this stable situated an equal distance between the Barnard House and the Stoneman House? A. I am about as close to the Barnard House as I was before.

Q. It puts you nearer to business both ways? A. It puts me where I ought to be to do the business.

Q. Could you have afforded to lease that and keep the saddle trains up where they were? A. Nobody could do it. It was an impossibility to do it. We will say for instance a man wanted to go to the Bridal Veil in the afternoon—and I very often have to take one single person to Bridal Veil for \$1. I go to the hotel with a two-horse vehicle, carriage, and there is one person; I have got to take one or four; it don't make any difference who is to go, I take them. I leave my barn and drive two miles to the hotel to get a passenger, and he comes down; that is four miles to get to the stable, and I go three miles more to Bridal Veil, and when I come back to the stable I have got to go two miles up to the hotel to take him back, and then come back to the stable. That makes eight miles to get the horses home.

Q. Do you charge the same price? A. \$1. Those are all regulated by the State.

MR. TRUMAN: Didn't we lower the rate half a dollar on a drive or two this year? A. Yes, sir; you lowered it on the Cascades, and it ought to be put back, too. I am glad that you mentioned it.

MR. TRUMAN: It never will be. A. It ought to be; you lowered it 75 cents.

MR. TULLOCH: About how much land in the valley do you think is under fence? A. Well, I will tell you; I have done my best to answer that question three or four times. I can't answer the question.

Q. You have stated something about there being a certain quantity on the north side of the river under fence, and you have spoken about there being a certain quantity of land on the south side under fence, and I want to know something about those fences. Haven't you got an approximate idea about how much land is inclosed; about the length of the fences? A. I said I supposed there would be about five hundred acres, at a guess. I don't believe there is more land under fence than five hundred acres, if you include everything in the valley. I think I am high enough, and the question is, am I not too much?

Q. What is the character of the fences? A. Some pickets, some wire, and some posts and rails put together this way and mortised.

Q. Are they in good condition? A. No, sir.

Q. They are not in good condition? A. No, sir; I don't know of a fence there that is in good condition; I don't know of a single one that is in good condition.

Q. In all the length of those fences, how many gates or openings are there, do you think? A. I made a statement that there were seven gates and turnstiles.

Q. Now, then, don't you think the public interest would be better and more largely subserved if there were a great many more gates, or a large number of gates, and a large number in excess of those? And don't you think thereby they would be enabled to go through the field at any point, and get views, if they so desired? A. No; I don't believe if there could be a gate put in one of those fences to-day that it would make the matter a particle better. I can understand very well from the questions some of you ask me that if you could have seen the valley and know it as I do,

that you would know for yourselves that I am making a square statement. On the north side of the valley, where the fences are, I don't know of a place that you could put a gate that would make it any better for anybody—either people that live in the valley or those that come in.

Q. There being only seven openings, it is very evident that if a person don't happen to be at one opening, he has to climb over? A. All the fences on the right hand, above the Barnard hotel, there is a walk through and turnstiles to go through. You can go right along the bank of the river, all the way up. On the other side of the fence you can come down with the carriage drive. It is a slip that runs right up between, and on the lower side there is a turnstile that goes out through the pasture and over a bridge across Yosemite Creek. You can't cross Yosemite Creek anywhere else except by that bridge, and these trails take you straight across the creek by that bridge. There is a strip of fence below that, but I never heard of anybody wanting to go into it. If they do there is a pair of bars that they can go in. I don't believe that it is in the way of any individual that goes there; and I am not saying that because I have any objection to its being torn down, because I have not the least in the world. They can tear them every one down if they want to, but as a matter of fact they are not in anybody's way on the north side of the river.

Q. Are they on the south side? A. On the south side; I have said two or three times they ought to be taken away. Next summer, if we have any snowstorms, there won't be any, except up by the Guardian's office, the five or six acres, but the balance of it was all falling down before I came out. It has been there fifteen or twenty years, and every summer you will see them propping it up, and in the spring it is all down again. It is neither ornamental nor useful, and I think the Commissioners would just as leave take it down as not. It had been leased heretofore, but now the lease has expired, and I think they intend to take it away. I don't know anything about that.

MR. TULLY: "Failure of the Board to properly manage the valley, in accordance with the conditions imposed upon the State by the United States?" A. That is a general question to include the whole thing?

Q. That covers the whole? A. Well, I don't know that I could say anything against them in that respect. It is a very hard matter for a committee or a commission of a number of men—say, from five to nine—to please everybody. But, as a general rule in the valley, I think the Commissioners have done, in their judgment, what they saw and thought was best; that is my impression; and I don't believe that they have done a thing that was intended to be arbitrary, or intended to be mean or wrong. I don't believe anything of that kind; I don't believe that they ever have, to my knowledge. I know nothing.

Q. Do you know any particular act of any one of those Commissioners that tends to create an impression in your mind that they were influenced in their action by any motive other than the public good? A. I don't believe that they were ever influenced by anything else. No, sir; I don't believe.

Q. There is no instance that you could cite of any act of any of the Commissioners, that you think— A. That would lead me to believe that they would do it for gain or otherwise?

Q. Yes, sir; that they were actuated by motives? A. No, sir; I don't think that the Commission is composed of that kind of stock. No, sir. I think that it is composed of gentlemen, and a gentleman won't do that kind of business.

MR. HOOK: Do you think that if the State made a larger appropriation

of money for the Yosemite Valley that the Commission would handle it with more satisfaction to the public? A. With more satisfaction than when; than heretofore?

Q. Yes, sir, than they do at present? A. It is questionable if you could find three or four men that doesn't cost the State more than this Commission does.

Q. I mean with regard to the appropriation made for the valley? A. I have never known the Commissioners to throw away anything that I considered willful in the valley; as I stated to start with in my testimony—

Q. You don't catch my question. The question is this: If there was a larger appropriation made by the Legislature, couldn't the Commissioners improve these trails and roads, and clean out this underbrush, etc., to facilitate traveling? A. Yes, sir; there is lots of room for that, and I think that they would do it if they had the means. Why, as a matter of course, I think that if they had the means that they would. And from the start they have made this summer, I am perfectly satisfied that if they had the means to go on and do something that they would do it, and do it well. That is my idea.

Q. Are there not many thousands of dollars received from people coming to this State on account of people visiting the Yosemite Valley? A. Yes, sir; what they leave in Yosemite Valley is a very small amount of what they leave in the State.

Q. Then you think it would be for the best interests of the State? A. I will show that to the committee, after I am through with these questions, if they will allow me to make a statement of two minutes; I will show you that Yosemite Valley does not get all the money that tourists do spend in the State.

MR. TULLY: With regard to the general system there of rentals and renting out privileges, etc. Do you, or do you not believe that it would be conducive to the best interests of the State to reduce all rentals there to a minimum, that is, to as small a rate as it could be done to cover the actual needs and requirements of the valley? A. Yes, sir; to do that. And then I would be in favor of reducing the rates; that is, reduce the prices for tourists correspondingly.

Q. Don't you think the reduction of rentals generally there would tend to draw or attract more tourists, and that the State would be benefited by it, and it would more than compensate for the reduction of rentals? A. Yes, sir; the increase of travel would.

Q. The increase of travel? A. Yes, sir; but at the same time, if you do that, the Legislature must make an appropriation to give them the chance to keep the valley in repair, and attend to it, because they depend, to a great extent, on the revenue they get from the valley to do that thing with now.

Q. What I was going to get at was this— A. If the Legislature would make an appropriation—

Q. I ask that question with a view to getting such information as to enable us to recommend what ought to be done in the future. For instance—now, I will assume that if it were known to tourists that rentals, and even hotel fares, and all kinds of charges for animals, and everything of that kind, were reduced to a minimum—in other words, considerably reduced from what they are there—that the additional number of tourists that would come to this country would more than compensate the State, even if the State made an appropriation to keep the valley up? A. I think so.

Q. Do you think it would be a wise and judicious process? A. Yes, sir; I think so.

Q. To contribute more money from the State, and make the accommodation of tourists easier, and thereby attract a greater number, and that the money they would leave in the State, even outside of the valley—which is a great deal more than they leave in it—the State would be compensated in the additional amount of money that tourists would leave in the State at large, for any reduction of rentals? A. I think it would be a good plan to reduce the rents, as you say, to a low price, and reduce the business that is done under those leases in proportion, proportionately. I would be perfectly willing to do that, and I think the travel will increase. A man that wouldn't take but one horse now would take two next time, and it would work up in that way.

Q. Say that you have three thousand tourists there, and you rent three thousand horses for them; you get \$1 for each one of them, or whatever you get; if the amount was increased so that there would be ten or fifteen or twenty thousand a year come into the valley, you could better afford to supply them with facilities for going over the valley at a rate considerably below what you now charge; than you do now? A. Yes, sir. That is the view I have taken of it for years.

Q. That the best policy of the State is subserved by reducing the rentals there to a minimum? A. Yes, sir; and cut down the business in proportion. But they can't do that unless the State appropriates money.

Q. I am assuming that the State would have, as a matter of course, to put out a little more money, which she would ultimately get back; that it would be a good investment on the part of the State to do that; it would be a good investment, financially speaking? A. Yes, sir; that has been my idea for years.

MR. HOOK: You said that those rents, and leases, and one thing and another, couldn't be reduced without the State making a larger appropriation? A. I don't see how it could. It wouldn't leave them anything to do anything with. They rely on that, I think, to a certain extent—in fact, it is the only thing they have got sure to do anything in the valley with, unless an appropriation is made.

Q. You don't think the State should make the Yosemite a self-sustaining park, but that the State should contribute sufficient money to make it a place of resort and pleasure? A. Of course they will have to do it that way or else they won't do it at all. The revenue that is derived in Yosemite from permits to do business and transact business, won't more than keep the roads in repair; the roads and trails.

MR. TULLY: You think that the State's policy should not be speculative; that it should not use the valley for speculative purposes; that it ought to do its duty by the valley and put out the money necessary to do it? A. Yes, sir.

Q. Without any special view to whether the valley itself was paying back the interest on the money; that they ought to look to the State at large for some benefit? A. I think the Legislature ought to make an appropriation for the valley at every session, and I think if it is spent judiciously they will see after awhile the benefit derived from it.

MR. HOOK: You consider it the fault of the State that the valley is not in a better condition than it is now? A. I think that would be a very good way to put it; yes, sir. I desire to make just a little statement here for about a minute. I read in the San Francisco "Examiner," some three or four months ago, in an article that was furnished them by a man—I don't know who it was. I think the "Examiner" has a reputation, or did at that time, at least, too good a reputation to have published such a thing as that of their own motion, and consequently I am under the impression

that the man who furnished the basis for that article must have been a liar by occupation. I think he must have attempted to make a living by it. He stated that the receipts of the saddle train were \$250,000 a year; that the receipts daily were from \$500 to \$600; and that the net income for the year was \$40,000. Now, gentlemen, I want to say: I just want six months—I don't want a full year at \$40,000—give me six months, half a year, and I will quit. I will state to you here, as a matter of fact, that I have been in that business in the valley for thirteen years. I know that the "Examiner" would never have published it if they had known the facts in the case. The fact is that I have been in the valley thirteen years, and been in a position to know what they have taken in in that saddle train business; that is to say, the livery business in there. I have kept the books part of the time myself; \$250,000 have not been taken in the gross receipts in the thirteen years; the gross receipts for thirteen or fourteen years have not been \$250,000. There never was in the valley but once in that thirteen years that the receipts in any one day was \$300. Now, these are facts. One witness here, Harris, has just gone away in time not to hear me. He testified before your committee—I read it in print next morning—that he had been there; that is true. That is the only part of it that was true. He testified, "I have been there." He says, in relation to the saddle train business, that "it runs from \$150 to \$250 a day; and I know what I am saying, because I have been there." He had been there; that part is true; and the other part is as false as a man could speak; and he knew when he was saying it that it was untrue. He intended to leave the impression on this committee that \$150 was the lowest that was taken in, and that \$250 was the highest. I want to say that whilst he was connected with the business—he was connected in the business for five years—and he knew when he testified to that that it was untrue. My books will show in the month of last October that I run nine days and didn't take a nickel in; not one nickel; and the other days was not \$25, the gross receipts; and it was just the same when he was there, and it is so every year. He said \$250. That was true to this extent: it just happened once, one year, and that is the only time he got a divy out of \$250; and it was just one time; and we never forget the day; we have spoken of it a great many times. Now, Mr. Hutchings has been in the saddle business, and he knows the statement that I am making; and he knows when Harris said, "from \$250 to \$300," that he lied, and did so willfully and intentionally. I want to make that statement, and I was in hopes he would stay here when I made it; and I do know it, and I know that it can't be done. It is not quite as bad as the "Examiner's" statement, but it is pretty near it. I wanted to state that matter because I knew he had been before the committee and would leave a false impression. Here is a fact, too: Every kind of business done within the limits of that valley—hotels, livery, butcher—don't come to \$65,000 a year gross. I testify to that, that the entire gross receipts of that entire valley don't come to \$65,000 a year. Now, how does that sound for \$250,000 for a livery business that never went to \$18,000 in a year yet? Of course, that is not testimony in this case, but I just wished to make that statement.

MR. TULLY: It is testimony in the nature of rebuttal.

MR. HOOK: Did Mr. Washburn spend \$20,000 on roads and trails within the grant? A. He did; him and his associates; yes, sir; I think they did.

Q. Did he ever get any of that money back from the State? A. No; not to my knowledge.

Q. They did that for the accommodation of travel and promoting the business? A. Yes, sir; and I helped to build part of those roads myself.

In 1875 we built the road that comes from Wawona into the valley; a stage road. I was interested with Washburn at that time. I never got a cent for it.

Q. Who keeps it in repair? A. The Yosemite Stage and Turnpike Company. It belongs to them now.

Q. That is all for the benefit of the State, is it? A. It is for the purpose of carrying tourists into the valley.

Q. It is certainly a benefit to the State? A. I should say so; the same as anything else that was connected with the valley. It would cut the same figure as any other improvement that would add to the people that would come in there; facilities for their coming.

Q. Was the Big Oak Flat road equally as expensive to build? A. Yes, sir; I don't know but more.

Q. That was built by private parties? A. That was built over a worse country.

Q. Built by private parties? A. Yes, sir.

Q. Who keeps that in order? A. Why, the company does, I presume. I don't know whether it is the company or whether it is owned by individuals. I don't know whether the turnpike company or individuals own it. I know several men that are interested in the road. Priest is one; Sprague is one; Mr. Drew is one. I don't know but what there may be some others. I don't know. I know they are.

Q. Do you consider the tolls on those roads excessive? A. Within the limits of the valley?

Q. Outside the limits of the valley? A. No; I don't know that they are.

Q. Going to the valley? A. Well, of course there ought not to be any on it. They are excessive if they are only a dime a head. The roads within the limits of the valley ought to be free.

MR. TULLY: I was going to ask you that question. Whether or not it would not be conducive to the best interests of the valley for the State to extinguish the title—

A. Exactly. That is more of an eyesore and bugbear than anything else. Dr. McLean found it so with his road; when he collected tolls everybody would growl about it. That was generally the case, and nine out of ten of them went over without paying him anything, but it was at his expense, and he had to keep his road in repair, and he did finally sell it to the State.

Q. Does this road of Dr. McLean's belong to the State? A. Yes, sir; they bought it, and paid him for it.

DR. McLEAN: That is, the part within the grant. A. Yes, sir; the part within the grant. Outside of that the Commissioners would have nothing to do with it. That is controlled by the Boards of Supervisors. No, sir; those roads ought to belong to the State within the limits of the grant, and the State ought to keep them in repair.

MR. TULLY: Shouldn't they outside the limits of the grant? A. Outside the companies will keep them themselves.

Q. Don't you think the State ought to extinguish these toll roads? A. To do that, the counties would have to buy the roads. The county we are living in is too poor to do it; they can't do it.

Q. Do you think that it would be good policy for the State to take that matter in consideration and help the counties? A. Well, I don't think it would be good policy for the State to do that. I think within the limits of the grant would be enough for the State to handle. I think it would be well enough to allow the part outside of the grant to belong to the parties and let them keep it in repair themselves; but within the limits of the

grant the State ought to own it, but outside I think the parties ought to own it. The Board of Supervisors set the toll, and if there is any complaint they can complain before the Board, and they can attend to that; have it lowered if it is necessary to have it lowered.

MR. TULLOCH: How many horses do you generally have and keep up? A. I had two years ago an even hundred, and when I cleaned up in the fall I had ninety-two, and I came in late last year, I think, with ninety-seven, and I went out with eighty-seven, I think. That is my recollection. We count up every time we take out. We lose from twelve to fifteen every year. They will get a broken leg, or a broken back, or something of that kind, and we have to kill them, and some die without being killed.

Q. Do you keep that many daily on hand all the time? A. No; when I come in on the first of April I take in about thirty head, and that will last me through the month of April, and the first of May I bring the balance in and keep them there until I go out—not until I go out, because sometimes it will be stormy, and I will send them out two or three weeks before; send them out in the month of October.

MR. KENNEY: I understand there has been a statement here by Mr. Harris wherein he says the Commissioners took all his improvements without paying him anything for it. That is in testimony here, I believe?

MR. GARDNER: Yes, sir.

MR. KENNEY: I would like to be sworn on that particular point.

GEORGE W. KENNEY.

Being duly sworn by the Chairman, testified as follows:

THE WITNESS: I want to make this statement: Mr. Brightman and myself got the lease from the Commissioners; we secured the lease of Ashburner, Raymond, and Madden—a ten years' lease. We run that place one year, and we assigned it to Harris as security for some money borrowed from him. He was to hold the place one year simply, and he was to return it to us in as good order as he got it, provided the place paid him his money; if not, why he should keep the place until such time as it did. The amount of the indebtedness was \$1,349; \$200 due Harris on store account; there was \$749 due Clark, as administrator of the Lemmon estate; and there was \$400 that would be due the Board of Commissioners the following January. At that time, the rents were all paid at the end of each year; now they are paid in advance. The sum total was \$1,349. In Harris' statement, he said he owed the Lemmon estate, or that we did, \$1,349, which is utterly false. We owed the Lemmon estate \$749, which Mr. Clark would have substantiated my evidence, if he had been questioned. He makes a statement that we were in debt to the Commissioners \$800, which is utterly false. We couldn't have been indebted that much, because we only had the place one year and our rent was not up until the following January. At the end of this one year that he was to have this place as security for his money—the place paid him his money back—he turned around then and brought in a bill of \$1,000 for his wages as superintendent of the ranch; \$3 a day during the winter months. That lease read in this way: for the consideration of \$1 paid in hand, all the improvements that I had or might have during that ten years, were to revert to the Commission at their pleasure. They were to cancel their lease at will whenever they chose to do it. Now, he claims his improvements. He has no more right to it than I have to ask any of you gentlemen. That was the state-

ment of the lease. He had improvements there, but he accepted that lease on the same conditions that Brightman & Kenney had. It was the same lease that we had with an assignment drawn up, made by Mr. Clark, who was Guardian at that time.

Q. Was this the property that he claimed was taken away from him and he was thrown out of the valley? A. That is the identical property, and that is the lease he had. He had the old Brightman & Kenney lease, with a simple assignment.

Q. He had no real claim? A. He had no claim at all. The leases were all made in that way. For the consideration of \$1, you sold all the improvements that you had or might have during your time of lease.

Q. Then do you not consider that the Commission did drive him from the valley? A. They did not drive him, and are not entitled to pay him \$1. If they will bring his lease, they will see it. The copy of the lease was with the old Board of Commissioners, and those papers never were secured by this Board. On the old original Board were Ashburner, Raymond, and Madden; years and years ago; among the first Boards.

Q. How long has Harris been in the valley? A. He took the lease of the property in 1876.

Q. When did he leave? A. He left in 1887, I think; 1886 or 1887; 1887, I guess it was. That is all I have to say. If there are any questions you have to ask, I am willing to answer.

J. M. HUTCHINGS.

Being duly sworn by the Chairman, testified as follows:

MR. TULLY: Where do you live? Answer—I reside now in San Francisco.

Q. You have resided in the Yosemite Valley? A. Yes, sir.

Q. How long? A. Twenty odd years.

Q. You are pretty well acquainted with what has transpired there during that time? A. Pretty well; yes, sir.

Q. Did you live there almost all the time, continuously, or only at intervals? A. For a great many years, continuously, winter and summer; of later years I have spent the summer, in part in the valley, and out of it in the winter.

Q. You understand the nature of this investigation; do you not? A. I have tried to understand it.

Q. Certain specific charges are preferred against the management of the valley. The charges are not against any individual members, but against the management, which would embrace all the time since the valley has been under the control of the Commissioners, since it passed into the hands of the State? A. That is the way that I understand it.

Q. The object of the investigation is to get at the truth or falsity of these charges. The first charge here is that of misapplying public moneys and appropriations. If you know anything about that—any instance that came within your knowledge, by those that had the valley in charge, in the handling, or investing, or applying of State moneys, where they had misapplied it—why, you will please state to the committee what you know about it? A. With the consent of the Chairman, before I do that, I would like to say a few words in reference to the valley.

THE CHAIRMAN: The hour is pretty late. I think if you will confine

yourself to the questions that Mr. Tully asks, we will get along more rapidly. A. All right; what is the question?

MR. TULLY: "Misapplying public moneys and appropriations?" A. Let me, before I even begin with this testimony, say that I wish it distinctly understood that I have nothing personal whatever against any of the Commissioners, and all the men connected with the valley—Kenney & Coffman and the hotels—have all been as kind to me as they could, and it goes against the grain, I assure you upon honor, to say a word that will in any manner implicate them—even implicate their judgment. But I would say this: that, in my judgment, it was not a wise thing, that is not a judicious thing to do, to spend a number of thousands of dollars on the Anderson trail. I understand, however, that that was not the action of the Board, but the action of the executive committee. And it has been the habit of the executive committee, in a great many instances, to do what it thought best, and frequently not to carry out the instructions of the Board. The Board, as I understand it, should devise plans and agree upon something, and the executive committee should be to carry out the instructions of the Board mainly; the details. Now, I know that Dr. Briggs was mainly instrumental in inducing George Anderson to commence the building of that trail, called the Anderson trail. I think Anderson wanted the work, wanted to do the work, and he commenced it; he made a contract to do it for \$1,500, from the Tissack Avenue bridge up to Snow's hotel, on the north side of the Merced River. That money was all expended before he arrived—when he arrived at the base of Grizzly Peak, just a little beyond the base of Grizzly Peak; not one fourth of the way; not one fifth of the way. I ought to say this; not being a man of capital or means, the Commission, through Dr. Briggs, kept supplying him with money to pay his men and pay for his supplies. When the \$1,500 had been expended, the trail had to stop there. Well, then another contract was made by the executive committee—not by the Board, as there had been no meeting of the Board, with Mr. Anderson, to complete it. He said that he could complete it, he thought as he got around Grizzly Peak, he could now complete it for another \$1,500. So, as they had expended \$1,500, they thought it would be better to expend \$1,500 more, than to lose the \$1,500 that had been put in. So a new contract was made, as I understand it, with Mr. Anderson, to finish the trail for the next \$1,500. But that only took him so far; and then, as he had expended the other \$1,500, making \$3,000, Dr. Briggs made an agreement with him—I presume authorized by the executive committee—to continue work upon the trail, and agreed to pay him, or rather to pay all of the bills that he might fairly create, for wages, supplies, tools, and everything of that kind. Well, he went on. I have understood—Mr. Anderson told me that Dr. Briggs said that he would pay him well for that service; and he said he thought he would get from \$4 to \$5 per day for his services; but he would like to see the trail completed. So, under the superintendence of Anderson, quite a number of men were employed, and they went on for some time with the trail, but their accounts got a little mixed some way, so that they could not quite get at the way the orders were drawn, as Mr. Anderson was treated with independently of the Guardian, myself. But at this juncture—that was commenced in August, 1882—that is, my taking account. I was instructed to receive the time, as given in by Mr. Anderson, and to make out the orders for the payment of the workmen, to be countersigned by Anderson, as belonging to his department. That was done, and they continued work all through the fall of the year and through the winter even, because he said that he could get it done by the spring if they worked all winter. In April, 1883, I was

instructed to examine the trail and to report upon it. I therefore took a man with me, and we chained every bit, and I reported every rod, or half rod, or chain, where it had been completed, how much was incomplete, and in what condition it was at that particular spot, giving the distance by chains. Then, after that was done—and I examined the work thoroughly—I reported, and there still was a wall eleven hundred feet in length; a wall of solid mountain, that stands at an angle of about 68 or 70 degrees, that had scarcely been touched. The trail had to be constructed right in this solid rock, and it had scarcely been touched. The upper end had had a little bit blasted out; and I reported all this, and also that I had conferred with mining men concerning it, and that it would take at least from \$12,000 to \$16,000 to blast that solid wall, so as to complete the trail. And after I had reported this, the order came for a suspension of the work; and it remained just as Anderson left it until a year or two ago—two years, or perhaps three years ago—yes, three years ago—a part of the trail was utilized, at my suggestion; first, to build a bridge across the main Merced River, and utilize the Anderson trail, so that it could arrive at Register Rock and connect with the other trail, the old Snow trail. Now, the number of days that Anderson was working on that I don't know; that is outside of this; but I think it was such a lack of judgment to begin with—and Dr. Briggs was a clergyman, and for him to go right into that, and without knowing anything about it, contract with Mr. Anderson for \$1,500 when it would take at least \$20,000; it looked so ridiculous, that so little business thought should have been given to it. Therefore I think that that was a misapplication. I think that the intention was good. I don't question the motive of a single member of the committee, not in the least; and I want that understood distinctly.

Q. You think his judgment was bad? A. I think the judgment of each one of those who had a hand in that was far different from what it should be.

MR. HOOK: Was it the judgment of the committee or just the doctor? Was it the judgment of the whole Commission or just the judgment of one Commissioner? A. The whole Commission had determined not to undertake it.

MR. GARDNER: How many of the present Commissioners were then on the Board? A. I think Mr. Madden was the only one. Hold on, please, excuse me; no, I will take that all back. There was John O'Brien, of Stockton; there was Mr. Raymond.

DR. McLEAN: He is dead. The question is whether any of the present Commission were members? A. I think nearly all except Major Truman and Mr. Taber, and Governor Waterman.

DR. McLEAN: Were on the Commission at that time? A. Nearly all of them.

DR. McLEAN: Why, no; Chapman was not on the Commission? A. No; that is so.

DR. McLEAN: I don't think that there was anybody on the Commission that is on now except Madden. A. I can tell you exactly, if you will excuse me a moment, and perhaps that will be better.

MR. CHAPMAN: There was only Mills and O'Brien. Madden was not a member.

DR. McLEAN: I don't know whether Mills was on. A. Mr. Mills was on.

MR. TRUMAN: Not Madden at that time, because I was up in the valley at that time, and he was not a Commissioner then, when they were building that trail.

THE WITNESS: [Examining book.] I will tell you exactly; at least I believe I can.

MR. HOOK: Name those over who are on the present Commission that were then there.

MR. TULLY: I understand the question goes to who were the Commissioners at that time.

MR. GARDNER: I asked how many of the present Commissioners were then on the Board, when the Anderson trail was begun? A. Wm. H. Mills, John H. O'Brien; I think those are all.

MR. HOOK: Mr. Mills is not on the Commission at present, is he? A. Yes, sir; I believe he is on.

MR. GARDNER: He was last year; he was until lately? A. Yes, sir; he was until lately, and may be yet for all I know of, my own knowledge.

MR. HOOK: Was the contract originally for \$1,500? A. Yes, sir.

Q. Was that \$1,500 paid by the Commission? A. Yes, sir.

Q. And they contracted further for \$1,500 more? A. Yes, sir.

Q. And that was paid? A. Yes, sir.

Q. And there was still further compensation allowed Anderson for building that trail? A. No; no compensation allowed Anderson. He never received a cent.

Q. Not in the first place? A. Oh, yes; he received the \$3,000, but when he went on superintending the work—

MR. GARDNER: Working by the day? A. By the day. He received not a dollar that I know of.

MR. HOOK: Was it the whole Commission that made a contract with him for this work? A. I think not, sir. I think it was the executive committee.

Q. Had they any authority to contract with Mr. Anderson to build that trail, without a full Commission, under the law? A. No.

Q. Had they, or had they not? A. No, sir; I should say not. As I explained it, I think, in my judgment, the executive committee should be to carry out the instructions of the Board in detail, and not to run—it has been the tail wagging the dog instead of the dog wagging the tail; I mean in a great many instances.

Q. The Commissioners have to make all contracts in full session, do they not? A. I don't know. I think they have not gone upon that rule. I think the executive committee has made any number of contracts.

MR. HOOK: As I understood it, the executive committee were powerless unless the whole Board acted? A. They generally indorsed the action of the executive committee, and they have done it ever since. Whatever the executive committee has done it has been allowed to go, I think, in most cases; scarcely without an exception.

MR. TULLY: Do you know how long Anderson worked there after he received the \$3,000? A. Yes, sir; I can tell you. It was from August until April. No; he worked longer than that. I think he worked on just upon his own ticket awhile, as I say; that is, he superintended the work and paid the hands and all that sort of thing—that is, made out their orders—until some time after, and then it was turned over to me: I think perhaps two months or two and a half months.

Q. So that he never received anything for that labor—I am speaking now of the work that he did after he had been paid on the \$3,000 work? A. Yes, sir.

MR. GARDNER: Had he men hired when he was working by the day? Had he hired men? A. Yes, sir.

Q. They never got their pay, either? A. Yes, sir, they all got their pay.

Q. Who paid them? A. I paid them; that is, I was instructed by the executive committee, or rather by Dr. Briggs, and I supposed he was the

mouthpiece of the executive committee—he was Secretary and Treasurer; I was instructed to receive the time from Anderson, keep an account of all their time, just as I did the men that I employed, and make out orders just the same as I did for the other men, only that he—only with the countersign of Anderson, so as to keep the two separate.

MR. HOOK: You were Guardian of the valley at that time, were you?
A. Yes, sir.

MR. TRUMAN: You were the Guardian of the valley during the building of the Anderson trail, were you not? A. Yes, sir.

Q. Did you not make out the accounts and verify them as correct? A. No, sir; that is, not to verify them as correct; at least, I don't remember doing it.

Q. Didn't you send the vouchers to Dr. Briggs? A. I sent the vouchers, and I have kept a copy.

Q. Could you send a voucher without verifying it as correct; could you do that? A. George Anderson signed them as correct.

Q. Didn't they go through you at last; weren't you the man who sent them to the Secretary? A. Yes, sir; I kept an account of all the vouchers, and I turned over the vouchers with my account—with my statement.

Q. Did you state in any of those vouchers or letters accompanying them that the money was misapplied? A. No, sir; that was not my business. I acted under instructions.

Q. You think now that it was misapplied? A. I do.

Q. But you didn't state so as Guardian? A. I had nothing to do with that. It was not for me to question those who employed me.

Q. We make the Guardian now do it. He has to verify all accounts. A. Yes; but it was not for me to question those who employed me as to any matters of that kind.

Q. How many years were you Guardian? A. Something over four years.

Q. Didn't you receive your instructions from the executive committee during that time? A. I received instructions from Dr. Briggs as Secretary of the executive committee.

Q. He is the one that does the writing. In all the executive committees there is some man who writes all the letters? A. Certainly. I received all my instructions from Dr. Briggs.

Q. You say that the Board generally ratifies what the executive committee does? Don't the Board generally leave most everything to the executive committee? A. I should think not, except the details or any little matters that had to be attended to between. I think it is usurping the authority of the Commissioners to do all sorts of things without being instructed. That is my individual opinion. I don't know what your by-laws may be.

Q. Well, we go by the law, don't we? A. I don't know what you go by.

Q. Didn't you go by the law when you were there? A. I went by my instructions. What are you putting those technical questions for? Do you want to get at anything particular?

Q. I am trying to do it as plainly and as respectfully as I can? A. That is all right, Major.

Q. You say the tail wags the dog? A. Yes, sir.

Q. And that the executive committee— A. That is, in a great many cases.

Q. The executive committee have the power, and they give the Guardian instructions. While you were Guardian and all other Guardians have to

make the vouchers and send them to the executive committee? A. Certainly; or send them to the Secretary.

Q. And you have to verify that the accounts are correct? A. Certainly; as given to me. They were given to me by Mr. Anderson, and to the best of my knowledge and ability I would judge that they are correct.

Q. And you made no interposition then, you made no complaint, that there was any money misapplied at that time? A. No; it was not my business to question the acts of those who employed me, as I said before.

MR. HOOK: You were a public officer at the time, were you not? A. I was Guardian.

Q. You were a public officer? A. Yes, sir.

Q. Don't you consider it the duty of every public officer, if you see anything that is going wrong, to notify the whole Commission that there is something going wrong? A. Not about their own acts. I think it would be an impertinence.

Q. Hadn't you a higher authority than the Commission—the people of the State of California? A. I did not so understand it. I was an employé. How can I be higher than the employer?

Q. Don't you consider that every man who has a position of public trust is higher than a Commission that employs him; that you owe certainly something to the people? A. I don't know how to answer that.

Q. If you were employed in a government position, and your superior instructed you to do wrong, would you do wrong simply because your superiors instructed you to do wrong? A. I think it would be my duty, if I were employed by you or any one else, to obey my instructions. I don't propose to look for any higher law than that.

MR. GARDNER: When you were Guardian at that time and you saw and knew that this money was being misapplied and put in the work on this trail that Anderson was building, was it not your duty to stop Anderson, or see that he was stopped, or take some steps to do it? A. I wrote to Dr. Briggs, and I conversed with Dr. Briggs about it, and with Colonel Jackson.

Q. And he would not agree with you? A. He knew all about it; he knew what he was doing.

MR. HOOK: Did you ever lay this fact before the whole Commission as a Commission? A. No, sir.

MR. GARDNER: You corresponded with the executive committee? A. With the Secretary.

MR. TULLY: Is it not usual for the Guardian, in his transactions there, to take his instructions and obey the suggestions of the executive committee? Is not the executive committee the party to whom he looks for his instructions, when there is an instruction to be given? A. It is the general rule for the Guardian to receive his instructions through the Secretary.

MR. TRUMAN: Who is always a member of the executive committee, of course? A. He has not always been, Major. The gentleman that was in the office, on Pine Street, under Mr. Weller, was not a member.

MR. TULLY: Do you know of any other instances, except that of the Anderson trail, in which public money has been misapplied? A. I will state a case, and then I will leave you to draw the inference. Perhaps that will be the better way of getting at it.

Q. State the facts, Mr. Hutchings? A. I was Guardian; Dr. Briggs was Secretary and Treasurer. He would each year send up young men from San Francisco that were incompetent for work. One year he sent five men. The first year he sent two. One of those men I had to discharge for brutally kicking one of the mules in the belly; we didn't think the poor mule would live; and when I discharged him, he said I could not discharge him;

that Dr. Briggs had hired him, and that no one could discharge him but Dr. Briggs. I said, "I don't care if the Lord of Hosts engaged you, you can't drive the State's team any longer." And he said he would see about that; but, of course, I gave the team to another man. That was one man that I had to discharge. In the fall of the year, another of the two, when I lost my daughter, he took charge of the house. When my wife died six weeks afterwards, he wanted to know if I would not like him to take charge of the house again. I thanked him and said I thought of closing it while we took the dear one to the grave. Well, he said, "I will take good care of it." And while I was away he stole everything he could lay his hands on; even to the very ring that had united us in marriage. In the fall of the year, I found all the things, nearly, in his possession. I obtained a search warrant. Now, I think it was misappropriating public funds to send two men of that kind. Then the next year five came up; one was a very fair hand, another was middling, but the other three were utterly worthless; and I remonstrated with Dr. Briggs about doing such things, sending me men that could not work, and putting them alongside of the men that understood work and had the brawn and muscle to do the work; and my remonstrances had no effect, except to nettle him; and when I discharged those two pets of his that he had sent up, it angered him. I have heard of that several times since. Well, the next year he sent up two men again. And, by the way, the team had to go all the way from the Yosemite Valley down to Dr. Briggs' ranch in Santa Clara Valley, or in Santa Clara County, and every year the wagon would be loaded down with supplies for the sons, and others engaged by Dr. Briggs, members of his church, and so forth, down in San Francisco; so that those mules had to haul the provisions for Dr. Briggs' sons right up to the valley; so when they arrived, they were dead almost, worn out, taking such heavy loads; eight, or ten, or eleven days going up, when it could have been done in much less time, if they had not been so overloaded. Now, I consider that a misapplying of public funds. I found one of these young men that was sent up and the son feeding the mules very heavily; there was any quantity of nice hay, and I remonstrated against that, and he said in a very impertinent way, "I have charge of these mules." But I said, "I don't see how that comes in. I want you to know I have charge of the State's property. I am not here in the interest of the Briggs family, but I am employed by the State to watch over the property of the State, and to take care of it, and let me say that whoever engaged you, if you don't do as I request you, I shall have no need for your services, if you are Dr. Briggs' son." That nettled him, and he began to say all sorts of unkind things to me and belittle and defame me in every way and manner that he could. Finally, without a meeting of the Board, he wrote to this Commissioner and the other Commissioner, until he had succeeded in obtaining one majority against me. This was no action of the Board; I mean in public meeting; yet the law provides that a Guardian can be deposed at any public meeting—something of that kind. Still, that was not done, and I consider that the way that was done was a misapplying of public funds. That is, one of the Commissioners. I don't think that they should all be to blame for that. I think they knew nothing about it scarcely, except by what I mentioned. I talked with a number about its being done, and they didn't like that at all.

MR. HOOK: Didn't you notify the Commissioners that such things were being done? A. I did, several of them; spoke to several about it.

Q. Did the Commissioners as a body take any action on it? A. No.

Q. None at all? A. No.

Q. Then he, as a preacher, thought he had certain privileges, which they generally think they have, to use the team of the Yosemite Valley? A. Yes, sir.

MR. TULLY: Do you know of any other instance? A. Well, I think it was a misappropriation of public funds to make that survey to Glacier Point, if, as I understand it, \$1,000 was paid to the State Engineer for constructing that trail, and Major Truman can tell me whether that is correct or not.

MR. TRUMAN: If you will proceed with your testimony I will see if I can get the book. A. I have understood that \$1,000 was paid for making a survey for a tramway up to Glacier Point. Now, to build a tramway to Glacier Point, it might be a very delightful thing in some respects, saving people from riding on horseback, but it would take about three miles of tramway about to be built. That would be my guess, and to say nothing of the dangerous thing. I was gathering ferns one day right underneath where that tramway was to run; here, we will say, was Glacier Point, and there was a bench upon which I was gathering ferns, and an immense boulder fell eighty or ninety feet beyond, and lots of pieces came all around about me. I was in great luck that I was as far off as I was. So that even if it could be constructed it would be a very unsafe thing. People would take their lives in their hands, and men who go into that without thinking—they go up on a nice little jaunt, and they know all about it; they see everything, and of course they know more than anybody who lives there or anything of the kind.

MR. TULLY: Knowing ones would probably suggest what a nice thing it would be to build that tramway? A. Yes, sir; from knowing so much.

MR. HOOK: That was just a difference of judgment; it was an error of judgment? A. I thought so.

Q. It was no criminal intent? A. No, indeed; I didn't impute the smallest criminal intent, or wanton intent.

MR. TULLY: You just think it was an injudicious—— A. An injudicious movement. It is the judgment of the people that I am questioning; I mean the action of the Board in doing such things.

Q. You are not questioning the interest of parties? A. Not one bit—not one iota.

Q. Are those the only instances you recollect of? A. I don't remember any others just now.

MR. HOOK: Do you know or not, Mr. Hutchings, whether the Board ever took action regarding the Anderson trail as a whole? A. I do not.

Q. You notified them of the fact, did you? A. I notified them.

Q. About the expenditure of that money as a body, while they were in session? A. No; not when they were in session. I conversed with a number of members, and they said they had nothing to do with it; that is, they had not authorized it.

Q. Should not they have authorized it in their annual meeting, or done something in that regard? A. It seems to me so. As they had decided not to build that trail in their annual meeting, and the executive committee, in defiance of that, built it, it would seem to me that that was a very high-handed thing to do.

Q. Was it the full executive committee that ordered this trail? A. I don't know. I only know that the Secretary, Dr. Briggs, made the agreement or contract with Mr. Anderson and then gave me orders afterwards.

Q. Do you know whether there was any fault attached to any of the executive committee or the Commissioners than Dr. Briggs regarding the building of the Anderson trail? A. I presume that Colonel Jackson

and Dr. Briggs were somewhat in sympathy. I think that Colonel Jackson thought it would be a good thing, and I think he does yet.

Q. You met with the Commission when they met once a year, did you not, in the Yosemite Valley? A. Yes, sir; sometimes. Sometimes I would be delegated off to do certain things by them.

Q. At the time they were in session? A. Yes, sir.

Q. Were you not, as the Guardian, generally supposed to be on hand at the time of their meetings? A. Sometimes Mr. Mills would send me away for something or other.

Q. Did you ever, in the meeting of the whole Commission, call their attention to the squandering or misapplication of money on the Anderson trail? A. No, sir; I mentioned it to the individual Commissioners.

MR. TRUMAN: Now I can answer that about the tramway. [Reading letter from Secretary of the Yosemite Commissioners to William Ham. Hall, stating that it was unanimously resolved not to receive his report upon the survey for cable railways in Yosemite Valley.]

THE CHAIRMAN: All that is done to establish the fact that there was \$1,000 appropriated to survey that tramway.

MR. TRUMAN: Yes, sir; he sent in a lump sum. He hired a man to do it, and that man sold out his claim; and we had good proof from the valley—although I would not use that in law—that the men were there only a few days, and it might have been done for a few hundred dollars. We have not paid anything; we didn't receive the report at all; we would not receive it.

THE CHAIRMAN: There has been nothing paid on that contract?

MR. TRUMAN: Not a cent; because he didn't make out any vouchers, or receipt, or carry out anything whatever; we didn't propose to pay it.

THE WITNESS: Then that cannot be a misappropriation.

MR. HOOK: I ask that that be stricken out of the minutes.

THE CHAIRMAN: I don't think it cuts any figure in the investigation at all. If there has been no money paid, there has been no misappropriation.

MR. HOOK: Then, Mr. Hutchings, as far as you know, there was no misappropriation of public money under the present Commission, except the two that you named—O'Brien and Mills? A. Those are all, I think, of the present Board.

Q. You don't know of any misapplication of money by the present Board except those two members? A. Well, I think there was a misapplying of public money later on, in some things.

Q. Have you stated them? A. No; but when I come to it I will.

MR. TULLY: The next charge is: "The destruction of private and public property in Yosemite Valley." Do you know anything about that? A. Yes, sir; I know considerable about that. I know that the Anderson house, that Anderson built and paid for out of his own money, was torn down. It was put up for the convenience of his workmen. It was a boarding house and sleeping house of the men, while they were for the most part—while they were building the trail. Then there was another house put up by a man named Flores. It cost him some \$400, he told me. That was pulled down. The photographer, Fagenstein, bought it for \$100, I believe; but that was taken down without consulting Mr. Fagenstein at all. Then of course we all know that the Cook hotel has been demolished, and the Leidig hotel; and I know that— Mr. Mills gave testimony that they were unsightly buildings, and ought to be out of the way. Now I would like for the committee to look at one photograph that I have here, and see if that is a very unsightly building. [Showing photograph.]

THE CHAIRMAN: Was this the condition of the building at the time it was torn down? A. Yes, sir.

MR. HOOK: Do you want to put that in evidence? A. Yes, sir. I think that that hotel, instead of being torn down—that is according to the conviction of my judgment—there were three parties offered to lease it. Mr. Drew, who is present, I believe offered \$300 per year for it. Mr. Priest made an offer for it, or he wanted to lease it, and to keep it as a second class hotel. And here let me say that a great number of people who come to the Yosemite Valley cannot afford to pay \$4 a day, and they would rather put up with accommodations and board that were not so good, providing they could be boarded and lodged for a smaller sum, say \$2 50 per day; and I think that that ought to have stood, to be a second class hotel in the valley. That is the conviction of my judgment. The Cook hotel, part of it, might have stood; and even if parts of the Leidig hotel had been decayed, it would have been a very easy matter to repair it, and to strengthen and brace it if it was needed for a second class hotel.

MR. HOOK: Then, in your judgment, would it not have been better, instead of constructing the Stoneman House, to have had a house of less dimensions, and then a cheaper house? A. No, sir: I think the Stoneman House—that is a nice, good hotel for those who want good accommodations. It is a splendid investment. But a four story house, where land is so abundant, and where people have to go up four stories, some of them—I don't think that was good judgment in the plan. I think it ought to have been a two-story house.

Q. Could they have rented the Stoneman House if there had been cheaper hotels, with the present income they get? A. It seems there were several applicants for it, willing to take all chances. They had no idea that the other—that was let before—I understand it that was let before the Leidig's even were driven out, or before the Leidig's sold out, I will say—not driven out.

Q. Wasn't it the general understanding that the Leidigs would not remain there but a certain length of time after the Stoneman House was opened? A. I was not aware of that. I had understood that it was between Mr. Barnard and Mr. Cook. They wanted Leidig out of the way, so that there would be no competing houses.

Q. What was the state of preservation of this Leidig house? A. It was generally good. One or two timbers could easily have been replaced for a few dollars.

Q. Did they apply all this lumber that was in the Leidig house to some other purpose to benefit the valley? A. I believe it was utilized, part of it, on an addition to Barnard's hotel—my old place.

Q. Has Barnard's hotel the same charges as the Stoneman House? A. They were, last year and the year before; they pooled their issues, as I understand it.

Q. What was the difference in the charges in the Leidig and the other hotels there: what was the difference in price under Leidig's management and the rest of those managements there, and the prices now at the Barnard or the Stoneman House? A. Well, they were generally a little less, I have understood.

Q. Much less? A. Not much, no: they liked Mrs. Leidig's cooking.

Q. Was there any time, since the valley has been opened, that the charges were much less than they are now, at the Stoneman or the Barnard House? A. No, sir: the charges were none too much.

Q. Could they keep a hotel there with reduced prices? A. I think a second class hotel could be kept at reduced prices.

Q. Would it pay? A. Yes, sir.

Q. You think somebody would rent it? A. I think so; and it would be for the good of the traveling public, especially camping parties; but I was very glad last night to hear Mr. Cook's testimony that he did make a difference in the charge of persons. I had understood that \$4 per day was the uniform price.

Q. Do you know what they charge for meals there now, if campers want to go to the Stoneman House or the Barnard House? A. I believe, according to Mr. Cook's testimony—

Q. Do you know from your own knowledge— A. I do not, sir. Then while we are upon that subject, I don't see—I will mention this fact: You all know, or have heard that Mrs. Glynn, a poor old widow, at one time was allowed to keep only two boarders; two workingmen. Now look at the narrow gauge of the men giving such order or instructions.

Q. How many is she allowed to keep now? A. She is allowed to keep, I believe, eight. Why should she be restricted? Why should not Barnard or Cook be restricted?

MR. TULLOCH: When was she allowed to keep eight? A. This last year, I believe; last July. But before she was only allowed to keep two.

MR. TULLY: By whom was she restricted? A. The Guardian. In instructions by the Guardian, I suppose; in instructions by the Board or executive committee; I don't know.

MR. HOOK: Who was the Guardian at that time? A. Mr. Dennison.

MR. GARDNER: As soon as this was brought to the notice of the Commissioners, didn't they give her the right to keep more? A. They did; this last summer, through Mr. Goucher's influence.

MR. TRUMAN: It was a unanimous vote though.

THE WITNESS: Yes; I am glad of that. And then again, about that stable letting; taking it away. The woman bought the building in good faith. I don't know whether this would come under that, would it?

MR. TULLY: Well, state the fact? A. The woman bought the building in good faith. She paid, I understand, \$600 down.

MR. HOOK: Who was the lady? A. Mrs. Glynn. I knew of it about five days after she had done it. She came to me and she said: "Mr. Hutchings, Mr. Hedges is going away in a day or two, and I have bought his buildings." And I said: "What, Mrs. Glynn; you have bought the Hedges; and done it without consulting or asking permission of the Board of Commissioners? Why that is a strange proceeding. Oh, I think you have done very wrong, very wrong, Mrs. Glynn; I am very sorry to know that you have done it." Well, she says: "But I have done it, you know." I said: "That is just like a woman when she goes into business." Well, she said: "He is going to leave, and I have got nothing but a receipt for the money." Says I: "Didn't he give you a deed?" "No; he did not." Well, I said: "I should think whether he has anything to sell you or not if you pay him \$600 you ought to have a deed of something that he is supposed to sell you;" and I said: "You better get some one to make a deed." And she hunted around, and she couldn't find anybody to make a deed, and wanted to know if I would not. Well, I didn't like to make the deed; first, because I was Guardian. It is true I was a Notary Public also, but I said: "Now, officially I would not think of making the deed, but to protect you I will do it unless you can find somebody else." And I did make the deed, and she had the deed, but it was given under those circumstances. I didn't know—and I am very particular in making this statement, because I have been accused of knowing, and of not advising Mrs. Glynn. I never knew that she ever thought of buying. I never heard of it until five or

six days after she had made the purchase. I am particular in that in order to correct the wrong opinion, or wrong impression that has gone abroad. Now, to take that woman's things away without giving her something—she got \$60, I believe, for the stable from the Oak Flat people, the Oak Flat Stage Company, and all those little things. They are run on a narrow gauge. They have been run so much on a narrow principle there.

MR. TULLY: Is that all she got for that property? A. She never got anything for that property.

Q. She paid \$600? A. She paid \$600 and she has never received a cent.

Q. Didn't you just state that she got something for the stable? A. Well, she received rental; but after Mr. Dennison had induced her to apply for a lease they took the stable away. They notified the Oak Flat people, the stage company, that they must pay the rent in to the Guardian, and not to Mrs. Glynn.

MR. GARDNER: How many years ago was that—when was that? A. That was about three years ago.

MR. HOOK: Were you Guardian three years ago? A. No, sir. Thank God, I didn't have anything to do with that.

MR. TRUMAN: Did you ever recommend the pulling down or tearing down of any of the buildings you have named as having been pulled or torn down? A. I think I may have done so; I think I may have recommended—no; I don't remember—some of the old Cook premises; what we call the Black hotel. It was not a very sightly place, in my judgment. I have no fault to find in taking that down. English gentlemen would come up to me when I kept the house and say, "By George, they stopped me at a bowling alley, you know." Because it was a long shed, a very unsightly looking place. It did look more like a bowling alley.

Q. Do you remember about the time you did recommend the pulling down or tearing down of some of those buildings—Black's, or any others; do you remember about the time? A. No, I do not.

Q. Were you Guardian at that time? A. I think I must have been; I think I was.

Q. Were you interested about that time in building a mill in any way; a sawmill, or anything? A. About that time, no.

Q. You don't remember saying in your letter that they were unsightly and ought to be pulled down; your letter to the executive committee? A. I don't know which building you mean.

Q. That there were rotten timbers in it, and that you could supply them with good timbers? A. No, sir; I never said anything of that kind.

Q. Did you not recommend that the Leidig hotel be pulled down once? A. No, sir; never.

Q. Never? A. Never, to the best of my knowledge and remembrance; never thought of such a thing.

Q. What proof have you that Cook and Barnard had an arrangement to charge \$4 a day, or, to quote Mr. Kenney, that they pooled their issues? A. They told me so. I suppose that was good evidence.

Q. I should think so. A. That settles that as far as I am concerned.

MR. TULLY: "The unnecessary destruction of timber in the Yosemite Valley?" A. Yes, sir.

Q. Do you know who got the rent of the stables when Hedges had the property? A. Mr. Hedges.

Q. Was it paid to Mrs. Glynn at any time after she bought it? A. Yes, sir.

Q. Was she deprived of the rent of the stable until Dennison had per-

sueded her to ask the Commissioners for permission to rent the stable? A. Yes, sir.

Q. Was it before that; it was at that time? A. It was at that time.

Q. It was her requesting permission that brought in reply the letter that the rent was to be paid to the Commissioners? A. I so understood it.

THE CHAIRMAN: Now, about the timber. State what you know about unnecessary destruction of timber in the valley? A. I think that has been the most damaging wrong that has been done to the Yosemite Valley. For instance, these large oaks; there is a photograph of one; the smallest was three feet and nine inches, and the others—there were three of them—were nearly five feet in diameter. One of them stood by a beautiful avenue of trees; there it is; there is the avenue; there is the road; there is the tree that they cut down. [Showing photograph.] This is the tree that is cut down. You see where it stood; it stood right on this avenue.

Q. What does this represent? A. That represents the tree cut down; that is a fence; that is a part of a fence around Barnard's garden; and it has been said that it was done to make a view from Mr. Barnard's bar-room back door. Now, if that were a thing desirable to be accomplished, those trees certainly could have been spared and the view obtained by a judicious trimming. I have looked at that myself. Because Mr. Barnard wanted a view from that back door; but by moving a few steps you could obtain the view as good as they get now, or nearly; right from the steps of what we call the river cottage; you can see the beautiful vista right to the foot of the fall. Of late years it has grown up some with cottonwoods; but we cut out those cottonwoods, those that were in the way, and a view was obtained from that.

Q. Is there any other timber destroyed to amount to anything? A. Well, then, around about the Stoneman House; you can go and count these stumps, now, of large, nice oak trees, which would have been, if allowed to stand, delightful places for people to walk under and to sit down and read in the shade. Last summer it was like an immense woodpile; I would suppose it was more like a forest clearing in the west than the home of grandeur and beauty.

Q. You speak of the surroundings? A. Of the Cook hotel I am speaking now; I mean the piles of wood; firewood.

Q. That is the Stoneman House? A. That is what is called the Stoneman House.

Q. You think there has been an unnecessary destruction of timber? A. Oh, a most fearful destruction of timber there, in my judgment.

Q. In your judgment it was unnecessary? A. Yes, sir; altogether unnecessary to protect the houses.

Q. It is not a matter of judgment about the destruction; as a matter of fact you know that? A. As a matter of fact.

Q. In your judgment it was unnecessary? A. There is one tree, a magnificent yellow pine, which had all the characteristics of that grand tree, and it was at least one hundred yards from the nearest corner of the hotel. Now people don't want to see everything at that hotel. They want to have little walks around and obtain views. That you must see everything from the hotel is ridiculous, in my taste. Then you go down; there was a very beautiful live oak growing just below Leidig's; a noble tree, standing by a little waterway; that was cut down by order of Mr. Dennison. It is all very nice to have all these trees cut down for the hotel people, because they can get firewood without having to go far for hauling it. Now I know that in the early days we had to cut some trees down in order to make fencing, but I went where they could not be missed. I even hauled them from what

we call Timber Cove, which was three quarters of a mile below Leidig's, and I presume—I know that it is supposed that I would consider it a piece of vandalism that I should cut down a piece in those days, but let me say it was forty-two miles to the nearest sawmill, and nothing but a trail. In those days you couldn't carry lumber forty-two miles on a narrow trail on the backs of mules. Well, when I first went to the valley to live, it had been made known to the public about nine years and made known by myself, for I took the first sketches of it ever taken, or wrote the first descriptive account of it ever published, and I have been working lovingly for the valley ever since. It is that that stirs my spirit when I see this what I consider vandalism going on. During the nine years after I had made it known to the public, six hundred and fifty-three persons entered the valley in nine years. When I went there to live, in 1864, the total number of visitors for the year was one hundred and forty-seven, and when an avalanche came down or a storm, or a notable personage came, I would send a little scrap down to the paper, and I treated people as well and as kindly as I could; and the next year we more than doubled upon it, and so we kept going. Here let me say that of course that which would accommodate one hundred and forty-seven would not accommodate three hundred and twenty or three hundred and thirty. We would have to keep building in some way or other or do something. Well, then, I went lecturing, and after ten years the number went up to two thousand seven hundred. That shows what can be accomplished by work. So many of these people that find fault with me, what have they done for the valley, but to gather what I have been driving—to pick up the game that I have been driving in their net. They may pick all sorts of faults with me, but what have they done themselves? I have done more than all of them put together, and the world knows it. Excuse me, I am not going to branch out any further on that, Mr. Tully, but of course we had to do something with this constant increase of travel. In the old house that I bought there was not a window or a door or a partition. Of course those had to be attended to and cared for. Then I imported some cloth from Mariposa. I could pack cloth in if I couldn't lumber, and I made rooms in the upper story of the hotel. That was not convenient. You would see all sorts of shadow pictures. There was a great deal of fun in the arrangement, because all sorts of shadow pictures would be dancing upon the wall or upon the canvas.

Q. Whispering in each other's ears? A. When they were just going to sleep and were just beginning to snore, somebody would break out in a regular guffaw at some shadow they had seen. The next year I tried to improve upon that. I sent two men trying to whip-saw some lumber. There was any number of trees down; I didn't have to cut them down. There were plenty of pines down, but very few cedars for rails and such things. Well, then, during the entire winter they cut one thousand four hundred and eighty-seven feet. Then I began to consider how many thousand years, more or less, it would take me to get lumber enough to make any decent kind of improvements, and concluded that I should never live long enough. I went down and got some irons for a sawmill, and then I employed a man who knew all about putting up sawmills, he said, but when the mill was up the thing wouldn't run, so I had a sawmill but no lumber; but in the fall of the year I went over to look at it and see what was the matter. I took my tools and tore it out; I saw it was not constructed right.

THE CHAIRMAN: Did this all happen before the valley was ceded to the State? A. The valley was ceded to the State.

Q. At that time? A. Yes, sir; the valley was ceded to the State really

six weeks after I entered it, but the news did not come until August ninth; that was the first I knew of it.

MR. HOOK: What year was that? A. 1864.

DR. McLEAN: The sawmill was built several years after that? A. Yes, sir; the sawmill was built several years after the deeding; but I presumed that the preëmption laws were a sacred compact between the Government and the citizen; and I went on making my improvements, and then I was notified by Mr. Ashburner, who is now dead—I was notified that I must take a lease from the Board of Commissioners on or before a certain date, failing to do which my house should be leased to somebody else during the winter.

THE CHAIRMAN: We will come to that after awhile. Just tell about the timber; we will come to that by and by? A. What I wanted to get at was that I didn't use much timber; and if Mr. Brightman is here he can testify that he hauled the logs from trees that were down, so that I was not a very great vandal in that. Then there are immense patches of stumps where young trees have been cut down. Now I do think that judicious trimming is a very desirable thing, but to mow them down indiscriminately—big patches—why, if the little groups were left—

MR. TULLY: Has any such mowing down as that occurred? A. Oh, I should say so; yes, in several places, and especially as you go over toward the Fall. And then again—well, we will get through with that first; these young trees were cut down, all of them, for a certain space, from the Barnard fence right to the Yosemite Creek; I mean, all of the pines. I was so desirous, while I was Guardian, and while I was living there, that nothing should be done except under the direction of a skillful landscape gardener. I thought that Mr. Olmstead—I knew that he had written a report upon it, and made it a special study, and that he or some one else—Ham. Hall—would be employed to lay these out, and to have any trees cut down that might be wanted, but to leave the others standing; not to mow them down as they have been doing, and then to make way for this view from the Barnard back porch, a whole swath has been mowed about as wide as this room, right up to the Fall; may be not quite as wide as this room—three fourths of the width of this room. And now I think that is a very great wrong. It is true you get a fine view from Barnard's back porch, but how delightful that place would have been. There are five creeks, and if there had been rustic bridges and walks constructed in the shadows of these beautiful trees while going to the Falls, how much better than to go right out in the blazing sun with their umbrellas, as they now have to do.

MR. HOOK: Could you see the lower part of the Fall at all with these trees there? A. Yes, you could by going a few steps, as I say, to what are called the steps of the river cottage; by going a few steps you can get a splendid view of the lower Fall. Of late years some of them have grown up, probably, but a little thinning out of the cottonwoods, not one of those trees needed to be cut down; not one.

THE CHAIRMAN: Tell the committee the character of the ground where those trees stood; was it such that passengers could go in and out—walk? A. Where the swath was?

Q. Yes? A. Oh, yes, it was fine and open. It is true there were ferns growing there, eagle ferns, and some bunches of willow, but it was not a thicket, as we understand a thicket. There was a certain amount of clearing to be done, but that is another matter. It was one of my plans, if I ever had the opportunity, to make a delightful walk from the iron bridge across the meadow, instead of being covered with dust, as you now are

when you go to the Fall. There is a little path across the meadow, and some turnstiles have been made within the last year or so; but nature made it.

MR. HOOK: You think it was an error of judgment in the Commission cutting these trees down? A. Yes, sir; it was a terrible error; an infamous error. No, I wouldn't say infamous.

Q. You don't think they did it with any spirit of vandalism? A. Oh, bless you, no.

Q. It was just a difference of judgment between you? A. Between the Commissioners and myself; yes, sir.

MR. TULLY: As a matter of fact, they were cut down? A. They were cut down; and I think we ought to preserve the beauty, especially when I know and think it will be perfectly—

Q. You think it was an unnecessary destruction of those trees? A. I do; and I think every beauty should be preserved.

Q. You think it detracted from the beauties of the valley? A. Indeed I do.

MR. CHAPMAN: I understood you, Mr. Hutchings, to say that this opened a view from Barnard's back door, from his back room? A. Yes, sir; the barroom back door, porch.

Q. Isn't it a matter of fact that there is a veranda right above that barroom and that back porch? A. Why, certainly.

Q. And isn't it a fact that the tourists are very fond of gathering on those back verandas? A. Yes, sir; why certainly they are.

Q. Don't you suppose that there has been many thousands of regrets offered that they couldn't see the Fall from those verandas? A. I never heard them; because you could walk a little distance to another veranda of the river cottage, and you had a fine view.

MR. TRUMAN: You say that Dennison did the most of this cutting? A. Yes, sir; he did.

Q. Who succeeded you as Guardian of the valley? A. Mr. Dennison.

Q. Did you recognize him as your successor? A. After awhile I did.

Q. Did you immediately? Did you treat him courteously? A. I tried to treat him courteously; yes, sir; but I disputed the document that he brought. I wanted the Governor's signature, and as soon as that came I turned over everything immediately.

Q. Did you make any remarks about the Commissioners at that time? A. I did about Commissioner Briggs, because I think that underhand way of doing and dealing with me was not gentlemanly; it was not honorable; therefore, I may have made some remarks about Mr. Briggs, who was at the bottom of it all.

Q. Not about the Commissioners who voted against you? A. No; I am not aware that I did.

Q. Was it the same Board that put in Mr. Dennison that had previously put you in; that is, the last time you were elected? A. I think there had been one or two changes.

Q. You were elected Guardian unanimously, were you not? A. I don't remember. No, sir; I think not. I think not. I think there were five out of eight; five out of eight, or five out of seven, I think Mr. Meany told me.

Q. Do you remember the vote taken upon your dismissal as Guardian? A. I believe it was five. That is what I understood. There was no vote except by letter; letters written by Dr. Briggs from his standpoint, with all this bitterness in his soul, from my treatment of his sons because I didn't want them to draw pay when they were not doing work; not earning it; and because they were impertinent.

MR. HOOK: Did you ever feel any animosity at being removed by the Commission? A. Well, I don't know. Is that a proper question to put?

THE CHAIRMAN: It is hardly pertinent to this investigation.

MR. HOOK: It is to draw out whether he still feels sore towards all the Commissioners that have ever been in the valley.

THE WITNESS: I certainly do not. Who would not feel, after Mr. Briggs had done what he had done and imposed upon me men that were utterly worthless?

MR. TULLY: The next charge is: "Clearing and plowing valley meadow land." What do you know about that? A. Well, I don't know that I do know much of that being done of late; only by hearsay. Mr. Harris told me to-night.

Q. State what you know? A. I don't know much of that, but I think it would be a very erroneous piece of judgment to plow up those flowers. I think it would be a good thing to remove a great many willows and bushes, but not the azalia and other evergreens and beautiful plants.

Q. "Debarring the general public from the joint and legal use of the valley." Do you know anything in the management there or anything that has been done, the tendency of which is to debar the general public from the free use of that valley as visitors and tourists? A. Well, it has been unnecessarily and I think very wrongly fenced, too much, a great deal too much. I think all of the fences in that valley should be enough to keep the cows necessary for the hotels, for the orchard, and a garden for each hotel. Then I think that the butcher, if the butcher is allowed to be in the valley, must have some place to keep his stock, but with that exception that it should be free and open, and that wire fence which is by the store, where it takes in that little piece of meadow, I think that is a great wrong to the public. Now, whenever a man came in there and went to get his dinner, he would picket his horse out; there was a nice little patch of grass, and it seemed to be always green, and to put that fence up and just shut it out. Now, teamsters coming in would stop their teams just on the edge of it there, they would rest and wait while they went to get their money, for the goods that they hauled or something of that kind, and their dinner, and it was a very great convenience to any one, and I think it was a great wrong that that was ever put there; besides Mr. Cavagnero testified—well, I know of my own knowledge that it goes nearly up to the big oak tree in front, whereas if the fence were out of the way you could drive around the oak tree if you wanted. There was a passage way between the Cavagnero place and the Hedges place, now the Glynn place as we call it.

MR. HOOK: When were those fences constructed? A. They were constructed about three years ago by Mr. Dennison.

Q. Was the majority of the fields that were fenced in now, fenced in years ago? A. Some were fenced in; a good deal of fencing was done years ago—a good deal of it.

Q. Was the majority that is under inclosure now—was the majority of the fencing done years ago?

MR. TULLY: I think it covers the case if we ask if it was done since the State has acquired a right, and during the time the Commissioners have had charge of the valley. That will cover the entire time, from its inception up to date.

MR. HOOK: Whether it was done or not before this present Commission went in? A. It is not the present Commission particularly, I don't think. It is the management of the valley from A to Z.

MR. TULLY: We are not here to examine into the acts of any special Commissioner. We are to examine into what the Commission have done

as managers of the valley, from the time that there has been a Commission, up to date, and not criminate any particular Commission, or to discriminate between them. We simply want to know what has been done in the valley during the administration of the Commissioners; not any particular Commissioner.

Q. How much of this fencing that you speak of has been done since the valley came under the management of Commissioners? A. I think just about half.

Q. About half of it? A. Yes, sir; including—

Q. Including all the fences, since it has been in the hands of the Commissions? A. I would say at least three fifths of it, since it has been in the hands of Commissioners.

Q. Do those fences operate as a barrier to the free ingress and locomotion of tourists and visitors who go there to the valley? Are they an obstacle to the free use of the valley? A. Most emphatically they are; and then if it were not for those fences people could go and camp. Now they have a ridiculous notion that everybody—I believe it is one of their orders, if not one of their by-laws—that every one wanting to camp must apply to the Guardian. A nice thing to go up to the Guardian when a team arrives in there tired out. Why can't he go and camp under a tree, if he does no harm? Camp anywhere.

Q. They are not allowed to do that, are they? A. No, sir; that is what I understand.

MR. HOOK: You don't know that for a fact, do you? A. Yes, sir; I do.

Q. As a fact? A. Yes, sir.

MR. TULLY: They have to get a permit to camp, and some place is assigned to them where they may camp? A. Yes, sir.

Q. And if it were not for those fences there would be a great deal of open commons upon which, if it were not for this permit system, they might, without consulting anybody, go and camp there? A. Yes, sir.

Q. As I understand, campers are always subject to the usual rules and regulations, so far as the preservation of the valley is concerned? A. Now they cannot go in, because it is all fenced, and that is considered private property; that is, it is leased property, and therefore private to those who have the lease.

MR. HOOK: How much of that fencing did you put up? A. I think I fenced about—there was five or six acres in the garden. I should think I fenced about fifty or sixty acres.

MR. TRUMAN: In regard to campers, I will read rule thirteen, of rules and regulations: "The Guardian shall always direct campers to the ground set apart for their use while within the grant, and shall see to it that they are comfortable, and establish such rules as will contribute to their comfort."

THE WITNESS: They shall be conducted there. That is a nice word. That is what I object to.

Q. You are objecting to the law, then? A. To your law; yes, sir.

MR. TULLY: The question is to get the facts, and if there is any rule, it may be suggested that the rule be changed.

MR. HOOK: If they go in one part of the valley and camp, will the campers not be allowed to stay there without asking the Guardian? A. It is implied, I think.

Q. Has the Guardian ever objected to the right of campers to camp any place they pleased in the valley? A. I don't know that, of my own knowledge.

Q. Did you, while you were Guardian, ever object to any persons camp-

ing where they pleased? A. I had no such ironclad instructions; they were unknown in my day, thank God! I always took pains and pleasure to show them to different parts where I thought—the camping ground at one season is very good, but a month later you can not occupy it.

MR. TULLY: Is it or is it not true that such grounds as campers would like to have is very much restricted on account of these fences? A. Yes, sir; the camping places—you see, there is what is called the camping ground.

Q. I mean such portions of the valley as a camper would like to go to? A. Of course, it is very much restricted, very much.

Q. On account of these fences and inclosures; on account of those fences? A. Yes, sir.

Q. "Holding annual meeting with closed doors, in violation of State laws." A. Yes, sir; that was done in the Cosmopolitan saloon—well, we call it the Guardian's office now; it was done when the new hotel was leased; in the office on Pine street; I was there, and I know.

Q. It was an annual meeting of the Commissioners? A. Yes, sir.

Q. Did they meet there for the purpose of transacting business? A. No, it was not an annual meeting; it was a special meeting.

Q. Was it a regular meeting for business purposes? A. Yes, sir.

Q. Was that meeting held with closed doors? A. It was called: "We meet this afternoon"—I heard Mr. Griffith announce it—"we meet this afternoon in executive session," at such a time. I knew what executive session meant; that it was for the Commissioners only, or such persons as they thought proper to call before them,

Q. When was that, Mr. Hutchings? A. I think it was year before last; just before the Stoneman House was quite finished; expected to be finished that fall.

Q. Do you know of any other instance? A. Well, down at the church they had it, but that was before the law was enacted. Therefore I think that does not apply.

Q. This last instance was since the law was enacted? A. Yes, sir.

Q. Do you know of any other? A. No; I do not.

THE CHAIRMAN: Do you know whether at that executive session the Commissioners called any outside person before them? A. I don't know; I think they did.

MR. HOOK: Had they received any person before that executive session—consulted with anybody? Were there any leases or privileges given during that session, whether it was a business session or not, so people could apply?

MR. TULLY: How does he know, if they were in executive session and he was not in?

MR. HOOK: If he went there he must have gone there to ask for a privilege? A. I was not there; I had no business there. It was an executive session; therefore that said "You keep out" to me, and I suppose it did to every one except those specially invited or requested, for purposes known best to the Commission.

Q. Was that a session when they should open bids for privileges? A. That was the time when they were to open bids, I believe.

Q. Have they refused at any time to receive any and all bids? A. I don't know anything at all about that.

MR. TULLY: Do you know of any other instance? A. No, I do not; I don't remember any.

MR. CHAPMAN: Do you know of your own knowledge, Mr. Hutchings, that that was a meeting of the Yosemite Commission? A. Supposed to be.

MR. CHAPMAN: I would state to the committee that that was a meeting of the hotel committee, and not a meeting of the Commission. The Commission was not invited to be present. There was a hotel committee appointed, and this was a hotel committee meeting only.

MR. TULLY: Who composed that hotel committee?

MR. CHAPMAN: There were five there.

THE WITNESS: There was nearly the whole Board.

MR. CHAPMAN: There were five.

MR. TULLY: Five Commissioners?

MR. CHAPMAN: Yes, sir. There was the executive committee and two of the advisory committee on hotels.

MR. TULLY: They were parts of the Commission.

MR. CHAPMAN: It was a committee meeting only. The Commissioners were not called at all. There was no notice sent out to them. This was simply a meeting of the committee.

MR. TULLY: This hotel committee was a part of the Commission?

MR. CHAPMAN: Certainly.

THE WITNESS: And nearly all the other parts of the Commission were represented. Whether they all formed the hotel committee or not I don't know.

MR. CHAPMAN: The Governor was not present, Dr. May was not present, Mr. O'Brien was not present. There were five present.

THE WITNESS: That would leave six.

MR. TULLY: "Reduction of rentals to the prejudice of the State's income?" A. Well, I don't know that I know much about that. I think rents at reasonable rates should be, as some have expressed it, as low as possible to cheapen—

Q. That question involves a fact and an assumption, or an opinion first, whether there was any reduction, and second, whether it was to the prejudice of the State. It might be assumed that reductions were to the benefit of the State. All we want to know is as to the fact whether rentals were reduced, if you know? A. No; I don't know of any that amounted to anything.

Q. You don't know enough about it to form any opinion whether it was for the benefit or to the prejudice of the State's income? A. No; I do not.

Q. "Failure to recognize their own contracts?" A. Well, I presume that alludes or applies to some timbers that were authorized to be gotten out by George Anderson. It would seem that the Commissioners had decided to build a new bridge near Barnard's, my old place at that time, and they made a contract with George Anderson to get out those timbers—that is, Mr. Galen Clark made a contract with George Anderson to get out those timbers for a new bridge, and he employed a number of men, and they worked for several weeks on those timbers; and while this was being done, it would seem that they had changed their minds, and they concluded to put up an iron bridge. Some of the timbers were used, but not many of them in the iron bridge, because it was an iron bridge and few timbers only wanted; and there the rest were lying for years, and George Anderson told me he never got a cent for them.

Q. He told you himself? A. He told me himself.

Q. Have you any idea how long he worked there, and what he lost in that transaction, if he lost anything? A. Well, it must have been somewhere in the neighborhood, more or less, of \$100.

MR. HOOK: Is he the same man that contracted to build the trail? A. Yes, sir.

Q. Were they trying to get even on him for getting the best of them on the trail? A. This was before the trail was built.

Q. Then, after they broke faith with him, he still went in a contract to construct the trail? A. Well, it would seem so; certainly he did. George was a curious man, but one of the best men that the Yosemite Valley ever had; one of the most useful. It was his daring that first fastened the rope up to the summit of the Half Dome.

Q. You don't know of any other instance, do you? A. No, I do not. I believe the Commissioners have generally acted honorably in all such matters.

MR. CHAPMAN: You don't know that of your own knowledge? A. I know it from what George Anderson told me; that is the knowledge and the only knowledge.

MR. TRUMAN: Were you Guardian at that time? A. No; Galen Clark was Guardian.

Q. He didn't tell you officially, did he? A. No; he didn't tell me officially, but he told me eight or ten times, and swore pretty lustily some times at "that damned preacher"—

MR. CHAPMAN: You don't know that he ever made any complaints to the Board about not having been paid? A. I think he must have done it.

Q. You think so? A. I think so. I don't know whether he officially notified them. I think he did, and through Mr. Goucher. I think Mr. Goucher was to have charge of his matters and get what he could for those timbers; I think so; I am not positive about that; and to get what he could for the trail—the back wages of Anderson.

Q. That was after he was deceased? A. Yes, sir. That was given by his brother after his decease; yes, sir.

MR. TULLY: "Withholding from citizens facts concerning the acceptance of the Stoneman House by the State and illegally leasing the same?"

A. I know nothing about that.

Q. Nothing at all? A. Nothing whatever.

Q. "Rendering useless the district school of Yosemite Valley." A. Well, it requires sixteen children to have a school in the Yosemite Valley. I know of but three there now that can go to school; those belong to Mr. Kenney—oh, there will be two more from Barnard's. That would make five; the Harris family going out, and the Leidig family going out.

Q. Was the going out, or the breaking up of that school, attributable directly to any wrongful act of any of the Commissioners or the Commission? A. I think it was a great misfortune to the public when Mr. Harris left that valley.

Q. Was that misfortune attributable to any act of the Commission? A. They leased his premises to somebody else; therefore, they took away his livelihood, and he had to go; and yet that man lived there fourteen years, and there never was a more obliging man, and you can see his book, his journal, or record book, the register, and it is full of thanks for the kindness with which he has administered to their wants. You cannot get eggs now or milk.

Q. You think then in so far as the acts of the Commission contributed to deprive Harris of his home there, you think that that far they were responsible for the diminution in the number of children? A. I think so, as far as the Harris family is concerned. I think the Leidig matter, however, was brought about from other causes. Cook and Barnard pooled their issues—

MR. HOOK: You don't think the Commissioners took into consideration whether or not Harris had any children, in making the leases to him, do

you? A. Well, he had a large family, and it was like turning him out of doors, and he did nothing to be turned out. He paid his rent, always.

MR. TRUMAN: Who, Leidig? A. Mr. Harris.

MR. TULLY: In your opinion, it was an act of injustice? A. Well, it was an uncalled for act, and one of great detriment, in my judgment, to the campers who generally were around his house or in the camping ground. The Harris house and place was near to the camping ground—to the regular campers ground—and on wet days, the cook stove was always at the service of the ladies to bake their bread. There could not be a more obliging man.

MR. TULLY: In the leasing of this property, was it offered to the highest bidder? Was it put up like other leases there, and somebody overbid Harris, or made a better bid, to the exclusion or detriment of Harris' bid? A. I believe the bid of Harris—I know that Harris, because I collected his rent many times—paid \$450 for the premises there and the orchard; and Coffman & Kenney offered \$550, and they leased it to Coffman & Kenney; evidently not considering the best interests of the camping public.

Q. As a matter of fact, Coffman & Kenney were the better bidders; that is, they bid a higher price, and Mr. Harris' bid was not accepted for that reason, I presume? A. No; he would have paid a higher price, but he had been paying that price, and he supposed that they would at least give him a chance, but there was no chance left, so he said to me. But that has nothing to do with it; I know that afterwards it was reduced on account of a fire that was mentioned, to \$300 last year and for this.

Q. The parties who then rented it for \$500, now have it for a lesser sum than Harris offered? A. Yes, sir; Harris paid \$450—that is, for that and the orchard, and they paid \$300 for those premises, without the orchard.

MR. HOOK: Was the house that Harris lived in burned up? A. Yes, sir; it was burned up after he left; burned up during the winter. I presume they left a log or something carelessly.

MR. TULLY: "Neglect of public roads and trails within the grant?" A. Well, if you ever saw a dusty place, it is that Yosemite Valley, and I can assure you that in the drive up and around the valley, you get more dusty than you do riding the twenty-four miles, if you go at any rate of speed; the dust is thick, deep. Now, this will give a little idea [showing photograph]. This is only a little distance of it. Now, for instance, there is not a walk to go between the two hotels, Barnard's and Cook's. There is no walk. You have to take that dusty road, no matter what teams go past; and ladies go visiting each other, and gentlemen, too, of course, from Cook's hotel down to Barnard's, or from Barnard's up to Cook's, and they have to trudge through that dust, and if anybody passes, then they have to be covered all over with dust, and it is so with the dust across the road there, the narrow way that they have made across the meadow.

Q. In any other respect are the roads neglected to such an extent as to jeopardize travel? A. I have never seen the roads in any dangerous condition; I don't know of any chuck-holes that have been spoken of.

Q. Do you know the condition of those trails that have been spoken about? A. I know last summer I went up to Clouds Rest, and there were drops down from one rock to another of at least a foot, in four or five places on that trail. Now, if that is a safe trail, I will give it up. Now, when you have got beyond the little Yosemite, the entire road up to Clouds Rest, or nearly all the way, is over an old morass, and cobblestones are right in the way; in places there are benches, and when you go up one of these benches full of cobblestones in the trough, as it were, you can ride very nicely; then you come to another bench; you have to go up that.

Those were full of bowlders: a half hour's work would have thrown out quite a number. I am speaking of what I saw last summer. The other trails where the timbers have been laid across in order to turn the water, and not taken out, there were drops down on those of six or eight inches, and when a heavy lady is going down on horseback, it is a very trying thing, especially if she is unaccustomed to the saddle. I should think if they had not taken out the timber that they should be kept pretty well filled up so as to avoid those steps, and that could be done easily with bark; bark of the cedar.

Q. Is that all? A. That is all I have to say.

MR. TRUMAN: I was going to remark that what he says about the dust is undoubtedly so; that I was up there in June, and these roads were very pretty, but along in July—and Mr. Chapman was greatly in favor of improving a watering cart, and we talked it over. But all California roads are dusty.

MR. CHAPMAN: I would like to ask the witness if he does not really think that if we had the money to do it, that we would sprinkle the valley roads and build a new trail to Clouds Rest? A. Yes; but look at the money spent in cutting down those trees. If the money was spent that was used in cutting down those trees, it would have gone a long ways towards making—you can get soil in that valley that will make very good roads.

MR. TULLY: "Employment of State labor upon work for private parties." Do you know of any instance in which State labor has been employed by the Commission, or by their order or instructions, for the benefit of private individuals? A. No; I do not. It seems that after Mr. Dennison removed Mr. Robinson's paint arrangements out of his studio, he converted it into a Post Office and Wells, Fargo & Company's Express office, and used State men to do it. Whether that is legitimate or not, or whether he did it under the instructions of the committee, I don't know. But I presume that alludes to that. I don't know anything else.

Q. Do you or do you not consider that the barn that has been referred to here—that was put up for Coffman & Kenney for their stable there—A. It may be; but then I would consider that a legitimate matter.

Q. You would not consider that as using public property for private individuals? A. No; I want to be fair.

Q. "Failure of the Board to properly manage the Yosemite Valley in accordance with the conditions imposed upon the State by the United States." A. Well, I think the facts that I have adduced already would go a very long way to prove that. Mind you, I impute no improper motive, but I think it is the poorest managed place, and I do it with respect, because I respect the gentlemen, and all of that; so it is out of no disrespect; but "I love Rome better than Cæsar; not that I love Cæsar less, but Rome more." Those who go to the valley go to have a good time, and do have a good time, and I am glad they do have a good time; but after all, there is not much accomplished; what I consider studying out. You have got to have a man who understands it, who loves it and can study it out, to study out the wants; where roads could be made to advantage; where good walks—not mere trails and turnstiles through barbed wire fences, but where beautiful walks down by the river could be made; and if people want to go fishing, that they can turn around and go a fishing; and if they want to visit, say from Barnard's hotel up to the Stoneman House, that there should be a nice walk made for them; not have a dusty road; or if they want to visit the Yosemite Fall, a beautiful pathway should be cut so that they can walk leisurely over there, among the shade trees; and there is a beautiful place for it; a beautiful one.

MR. HOOK: While you were Guardian of the valley were any of these improvements undertaken—did you suggest them? A. You see, one thing had to be done at a time; and I was instructed to put all my energies on a road around the floor of the valley; those were my instructions, and I spent a great deal of time looking out picturesque openings where a road could be run here or there, or whether it would be better here or there or yonder.

Q. Did you ever find that the Commission were cramped with regard to the amount of money appropriated by the Legislature—that they had not sufficient money to carry on the necessary improvements? A. I have always thought that the people of California have been liberal enough, and would support that valley readily. Until I went in there as Guardian, they scarcely ever got anything. I got three appropriations, or I was instrumental; I was sent here by the Board of Commissioners, and I obtained three appropriations for the valley, of \$25,000 each. That shows that they are willing to appropriate, but that it should be well expended. I have no fear about the Legislature appropriating everything; and it is of so vast importance. I wish to mention now one fact. Of course, when keeping hotel I was put into pleasant communion with my guests; and on one occasion one day I said to one gentleman, "If it is a fair question, how much has it cost you—in other words, how much have you had to spend in California?" I thought I would put it that way. Well, one gentleman told me that he had spent \$350; another told me that he had expended \$1,100 in blankets alone; that is, blankets at \$50 a pair. He had erected a beautiful house East, and he wanted those blankets. He had expended \$2,700; and another had expended \$700, and another \$400; and after I got thirty I added them up; I thought thirty would represent those I did not question. After I had added them up, it averaged \$510 each, that each one had left in the State. Now, we have from two to three thousand; suppose you have a thousand, you can see there is half a million dollars. Last year there were three thousand went up to the valley; one year there were four thousand; you can see the wealth that is pouring into California; and then this valley should be preserved. That is why I am so anxious to preserve it, for the heritage of our children and the public that are coming, and coming with liberal purses.

MR. TRUMAN: I want to ask Mr. Hutchings if he has not had, generally, when he was Guardian, a great deal of trouble with the Commissioners who were over him? A. No, sir.

Q. You were paid \$24,000 once for a claim, or for some right? A. Yes, sir; you mean the old Board? I should say I did have; I had a fight of ten years to keep them from stealing everything I had.

Q. After you accepted that \$24,000 did they not have to dispossess you by process of law? A. Yes, sir.

Q. Did you not afterwards put an advertisement in the newspapers in which you referred to them as so called Commissioners? A. Yes, sir.

Q. Declaring that they had no rights whatever? A. No; I did not declare they had no rights.

Q. So called Commissioners? A. So called Commissioners; yes, sir.

Q. They were the Commissioners? A. Yes, sir.

Q. Isn't it an actual fact that you declined to pay \$100 that you had collected to the Commission? Don't you stand on the books as behind, as Guardian, \$100? A. I am glad you mentioned that.

MR. TRUMAN: I have to mention it, because it is on the books. A. It will just as distinctly show the meanness of those on the executive committee—I mean Dr. Briggs, mainly. Now, to begin with, after he had

worked, as I have testified, to get me out, Mr. Dennison did not arrive until the ninth of October. He did not, as I considered, bring the right document for me to deliver up, but when he did bring the right document, with the Governor's signature, then I turned over everything. We had to take stock; I had to make my report; I had to get up the time—make up the accounts of the time of the men up to date—and that took four fifths of a month. Now, those men, the Commissioners, had stopped my salary the first of the month, and as Dr. Briggs was Secretary and Treasurer, I thought I would have a good time whistling for that money from Dr. Briggs. I had enough money to pay myself, and I thought it was my duty to my family to pay myself out of that rather than whistle after it from Dr. Briggs, after he had proved himself such an utterly mean gentleman—man, I mean; I won't call him gentleman.

Q. Well, don't you know that you ought not to have done it? A. That may be; it may have been an error of judgment.

Q. The same as some of the cutting of trees? A. The same as some of the cutting of trees, perhaps.

Q. It is probably a greater error of judgment, because the by-laws expressly prohibit you from disbursing any funds to yourself or to anybody else or retaining any. It says the Guardian must send every cent to the Secretary? A. Those have been made since I was Guardian.

Q. But the law was in force, the same? A. No; there was no law in force to that effect, to my knowledge.

Q. Well, the books show so, and the books show that you were written to to pay that \$100, and there were thirty other dollars that you had that you collected of Leidig, which you did pay? A. I paid everything except the \$100, or four fifths of that month's wages that were due me, and I felt that I ought to pay myself, just the same as I would pay other men under the circumstances.

MR. TRUMAN: Still it would not look well in any Court or store in the world? A. That may be; but you can see the circumstances.

MR. TRUMAN: And to-day on the books you stand owing the State \$100? A. Then in my account the State owes me \$100.

MR. TRUMAN: Then you ought to get it in the proper way? A. That may be; it may be an error of judgment, but nothing dishonorable, thank God. I never did a dishonorable thing in my life, to my knowledge.

MR. TULLY: I understand the nature of that transaction, properly stated, would be that after you were discharged you rendered a service to the State there to the extent of four fifths of a month? A. Yes, sir.

Q. For which you deemed that you were entitled to pay? A. Yes, sir.

Q. And that, as a matter of fact, in your settlement you retained the amount of \$100 as payment for the services you had rendered the State? A. That is it, sir.

Q. Did you attempt to evade the fact that you had retained that \$100? A. Not in the least. In my letter I made a statement—my letter will show.

Q. Did you inform the Commissioners the reason why? A. Yes, sir.

Q. Did they ever make any legal demand on you? Did they ever take any legal steps to collect it or enforce its collection? A. No.

MR. TULLY: The Major asks you if you didn't understand that it was your duty to pay that money over? Now, I will ask the Major if he don't understand that if that money was due under the law, it was the duty of the Commission to bring a suit against Mr. Hutchings and collect the money, and was it not a neglect of duty on the part of the Commissioners not to do so?

MR. TRUMAN: I was not on the committee at the time; I think they would have a right to.

MR. TULLY: If their failure to institute process to compel the payment of that money was not a violation of the laws and a neglect of their duty?

MR. TRUMAN: I think if I had been a member of the executive committee I should have tried to get it either by law or some other way, except if we had put our heads together and said it would cost more than the amount involved; it only being \$100. I don't like to evade anything. I like to be square. I have tried all my life to do the square thing by my colleagues. I don't like to say anything about my colleagues.

THE WITNESS: Let me say one thing. I want to say that I had a conversation with Dr. May upon that subject, and he said he had no doubt that the Commissioners would pay me if I would pay that; and I said: "Doctor, I would do it cheerfully, and if I have committed an error in that direction, and they are willing to do the fair and square thing by me, I will do it cheerfully." And then, before we close, you know that I had a contention; you know that I got \$24,000. According to the testimony of the expert, I had expended \$41,000. Therefore, as a business proposition for any business man, they certainly would not think that a very nice way of doing business, to spend \$41,000 and only take \$24,000. Therefore, as they were so exceedingly severe upon me, and pursued me all along, and I had a fight of ten years on my hands, and one of the members, the main instigator, said to me, after it had been going on—it was just being completed—said he, in a sneering sort of a way: "I suppose you are about tired of fighting us?" I said: "Mr. Ashburner, I am not aware of it. Have I shown any signs? I have only been at it ten years, and if I cannot stand it ten years' more, I will certainly sell out to some man who can."

[Adjourned to the call of the Chair.]

TUESDAY EVENING, February 19, 1889.

Present—Mr. Rundell, Chairman, and Messrs. Hook, Crawford, Tully, Gardner, and Tulloch.

Governor R. W. Waterman, in response to an invitation, met the committee at half-past seven o'clock P. M.

MR. TULLY: The Chairman of the committee has deemed it prudent, in view of the nature of the charges which we are assembled here to inquire into and examine, and as a matter of courtesy to yourself—thinking that perhaps you would like to say something with regard to the object of this investigation—to invite you here this evening. I will state that we are not here specially for the purpose of persecuting or prosecuting anybody; we are simply here for the purpose of investigating certain charges. You are aware of the nature of these?

THE GOVERNOR: Certainly; and I am very glad indeed.

MR. TULLY: For the purpose of obtaining any light that we may be able to get, for the purpose of guiding us in the discharge of the duties that may devolve upon us. What we want is for every one to have a fair hearing, and to get at the truth of those charges as far as we can. If you have any statement, Governor, that you would like to make—we don't propose to put you through a rigid process of cross-examination—but any statements which you have to make with regard

to those matters, either concerning yourself or concerning the Commission or its management generally, we would be pleased to have you state them after your own manner, and as concisely as you can? Answer—Well, the first time that I was in the Yosemite was in June, 1884. I went there with my family, the most of my family. I had nine in my party. Stopped at Barnard's. We left the road at Merced. That was before there was any railroad in, and we started in stages, which were all first class; in fact, I have staged a great deal in my life; and they were the best stages that I ever rode in, and the best horses, and the most accommodating drivers, and one of the best roads that I ever traveled on. When we got into the mountains, the roads were particularly good. They seemed to have gangs of men along—I know we remarked that, long before I ever thought of being here, or having anything to do with the Yosemite Valley—they had gangs of men, and kept everything in perfect order. That was when we got into the mountains. Even the little rocks were kept out of the road; the ruts were kept filled up. My recollection is, that we stopped the first night at Wawona; Clark's, we called it. I speak of this thing particularly, finding everything so good, because I have lived on the frontier all my life, that is since I was twelve years old, and it seemed to me extraordinary that they should have everything so good and kept in such good order. At Clark's, everything was as good as we could ask. From there into the Yosemite we rode the next day. We all thought that it was one of the most delightful rides we ever took in our lives. We stopped at Barnard's. I think I mentioned that before. It was well kept; in fact, as good fare as I ever saw. It seemed extra good to us, for they gave us all the speckled trout we could eat, and it was at the time strawberries were ripe, and we had them every day. There was not a day that we missed trout, all that we wanted, and we had no fault to find with the hotel at all; and I paid him \$4 a day, but I felt that it was cheap enough. I went on nearly every trail. I went up first the Yosemite trail, and went over to Eagle Point. We put up a flag there. Then I made the Glacier Point trail twice, and the trail up to Vernal Fall we made once or twice, and to Mirror Lake. We were there eight days and a half; and we were down to the Cascades, I think they call it; and we expected a little rougher time than we had, but I know we all came out thinking how nicely the valley was kept; how nicely the roads were kept. We were told that their means were limited; but as far as they went the valley seemed to be very well cared for. I was up several times to Mirror Lake. That was before the lake had filled up so, and before there was so many willows. Now it is badly filled up, and a great many willows growing. The next time I was there was, I think, in October of last year. I went in then as Governor to receive the Stoneman House. I was very much disappointed in the location of the house. It was intended for a good house, and is a good house, only some parts of it was not finished as well as they should be, for which we made a deduction from the contract price. We went over the valley a great deal. There was no water then; I think there was not a drop of water running over the Yosemite Falls, and very little over the Bridal Veil Fall. There was but very little if any water in Mirror Lake and in the river; there was but very little water there. I speak of this because there is a little plan, or a big plan, that I want carried out, to keep the water there. When I was there in 1884, and went up to the Yosemite Falls, there had been seemingly no sheep there. There were any amount of places there that the snow was up to my knees there in June; in fact, we were there the first of July; but since then there have been hundreds of thousands of sheep fed all over that country, so that—I

have not been up to the Yosemite, but I am told that everything is eaten off. There is nothing there to hold the snow. As fast as a spear of grass or a leaf comes up, a sheep stands ready to eat it. It requires that to keep the snow. That is the reason why there is so little water; at least, that is the reason that I assign that there is so little water on the Falls. And the sheep up on the stream that feeds Mirror Lake have tramped it so that they have filled it in, and the lake is very much lower than it was. I went all over the valley a year ago last October, and advised a great deal about the trimming up and building of bridges and roads. There has been a good deal of timber cut around the Stoneman House that I didn't approve of, but that was cut and that was done with. I forbade then, as far as my power extended, their cutting another stick of timber, unless they asked permission. I forbade even the cutting of a tree that would give a better view of the Falls, and said: "If they want a better view, let them go further to one side or the other." I found everything in excellent order in October, for the fall of the year. We stopped at Leidig's hotel then. There was Leidig's, Cook's, and Barnard's.

Q. What year was that, Governor? A. That was in 1887—a year ago last October. I found the Stoneman House a very handsome house, very well proportioned. I felt then that it was in a very poor situation, but I believe they have decided since it is in a good one. When I was there last June I heard some one say, "What a lovely location for the house." I heard some one say, "I think so myself." You know how a person will. And being that we had the house there, I thought we might as well think so anyway, because we couldn't pick it up and carry it away. When I was there a year ago in June, we had several bridges to build, and I told the Guardian, in cutting trees, I went with him and showed him what trees to cut. They had this Douglas spruce. It is a very stiff, heavy timber, and not easy to rot, and I went with him and showed him what trees to cut, and not to cut them all in one place; but there is such a terrible growth of timber, you would not miss it. I don't know what the technical name of it is. I have always known it as the Douglas spruce. It is a very solid timber, and makes excellent stringers. I showed him all about where to go. I spent several days. I went to every part of the valley—every crook, and nook, and corner—to familiarize myself with it, and my taste runs that way. There is not a man in the world that hates to see a tree cut down worse than I do. Trees are my idols. At the Stoneman House, I went in there a year ago with the Commissioners, and took a portion of my family with me. I saw as fine a kept hotel as I ever expect to in my life; in fact, 100 per cent better than you would expect to find out there so far, where you have to haul everything on teams at the rate of 2 cents a pound. The rooms were as nicely furnished—the whole hotel was as nicely furnished as the Del Monte. I had a suite of rooms there—four or five rooms. I had my family with me, and I paid my bills, too; I would not take anything for nothing. I speak of this in particular because I have seen articles in the paper about Cook furnishing that hotel with old furniture from his old houses, in the different old houses. That is why I speak of this in particular. The furniture was nice oak and ash, light colored, and as good as I would want to put into a house if I was going to build one worth \$100,000. The carpets were splendid. My wife has been an invalid for a good many years, and she didn't go out a great deal, and we used to speak of the furniture and the rooms, never knowing that there would be anything said about it in the papers. Cook came to me one day, and says: "I want you to see how this house is furnished." I told him I was satisfied how it was furnished. I went through with him in the three stories, and

everything was in perfect order. Now, the furniture in the dining-room, the table furniture, was all as nice as you could ask, and we had poultry, chickens, and such things, as often as you would get them on the table in San Francisco; and they cost \$1 apiece. I paid \$4 a day for my fare; I paid \$3 50 in San Francisco. In this hotel there are bath-rooms on every floor. Every person has the privilege of a bath; there is always plenty of hot water, and plenty of water-closets, and everything as nice and convenient as can be. Now, if you have any questions you want to ask me, I will answer them.

MR. TULLY: I want to ask you a few questions with regard to the Stoneman House. Is that a three or four-story house? A. It has three stories and a mansard roof.

Q. How many rooms are there in that house? A. That I couldn't tell you. There are somewhere about a hundred.

Q. How many exits? What are the facilities for ingress and egress to that hotel? A. Well, there is a wide front door—well, I can't tell you. I think there is one on the end, on the west end, I think, and I believe there is one from the parlor that opens out in the front; I can't tell you exactly.

Q. My object in asking the question, Governor, is that I have heard it said—it does not appear in any of these charges—I have heard it said that there is only one stairway and one way of egress, and that was by the front door, with the exception of a back door, which serves for a kind of a kitchen door, or a back door, which struck me at the time that for a three-story house, that might sometimes have three or four hundred guests or more in it, that it was a very dangerous building, or would be, in case of fire, unless it is fire-proof, or something of that kind. A. There is one very wide stairway that goes clear up. It is extra wide and very easy; and there are back stairs. I remember the back stairs; the different doors I don't remember.

Q. With regard to the general features of that valley, Governor, the fencing and the artificial barriers that have been erected there since the valley was passed to the State, are considerable, are they not? The artificial barriers in the shape of fences? A. I don't think there are; no, sir. There is what they call the ranch, over across is the Stoneman House on the north. How are the points of the compass up there?

MR. HUTCHINGS: The Stoneman House is east.

THE GOVERNOR: Which side are Yosemite Falls on?

MR. HUTCHINGS: That would be northwest.

THE GOVERNOR: On the northwest side of the river there, there is—well, I don't know how much; well, eighty or one hundred acres; may be more, what they call the farm. There has been a farm there.

Q. Did it strike you, at the time you visited there at any time, that those fences marred the general appearance of the valley and would embarrass to some extent or any extent, tourists or visitors there? A. Not the least in the world. There are splendid roads around in every direction. There is a great deal that is opened and that is so dense that you cannot get in. The Indians, I am told, used to burn it out. If you have ever had any experience in a brushy country, you know how fast it grows. I have had a great deal. It grows beyond all accounts. Now, the bridges are very nice. These new bridges that they built this year, of course, I haven't seen. I expect to see them in June. In regard to water, there is one of the finest springs I ever saw in my life. You may class it as one of the finest in the world; the one that supplies the Stoneman House with water. I don't know what the fall is, but it is enough to throw it all over the house. It is the clearest water—why, it was four or five feet deep, and you could

have seen a needle in the bottom of it, it was so clear and beautiful; and no nicer water in the world. That supplies the house with water.

Q. I understand that notwithstanding you are at the head of the Commission, that you don't give your personal attention to the details of the management of the valley? A. No.

Q. You simply have a general supervisory care of it; the business is done pretty much by an executive committee? A. There are men there that have been there many years, and such good careful steady men that I would just as leave put my own business in their hands. Take a man like Mr. Madden; I would trust him with any of my own business, I have such confidence in him. There are a great many improvements that should be made there. When I went in, in October, there was a very celebrated Englishman went in with me, or he went in as a tourist—himself and wife. He was Dr. Davies, who has charge of that great insane asylum outside of London. They were two of the highest cultured English people that I ever saw; the finest conversationalists you ever saw. He came over to the medical convention which was held in Washington, I think, at that time, and they gave him three months leave of absence. He came by the way of the Yellowstone, and then through here to the Yosemite. I was sitting on the stage with him when we stopped at Inspiration Point. He looked, and looked, and looked. He says, "This sight pays me for my trip from England and back—this very look;" and he made the remark that there is no country in the world advertised in England like California and the Yosemite. He said that in every English gentleman's and in every public gallery—picture gallery—you find a painting of Yosemite. He came back when I did. He said that while the Yellowstone was on a more extensive scale, that this was as far ahead of it as the heavens are above the earth in beauty of scenery.

Mr. Hook: Do you think that with the amount of money that is left in the State by tourists, there is sufficient money appropriated by the Legislature for the proper maintenance of the valley? A. It is on the increase all the time.

Q. Is there a sufficient amount appropriated by the Legislature to maintain the valley, considering the remuneration that we get in the State from the travel to Yosemite Valley? A. No, I don't think there is. I think there should be a larger sum appropriated.

Mr. TULLY: You think a greater expenditure of money, although it might be apparently thrown away, or at least that it is not particularly called for there, yet, if it added to the attractiveness of the valley to visitors, that the additional amount of money that would be left in the State by the increased number of visitors, would more than compensate for the outlay, in improving it and improving its appearance? A. Yes, sir.

Mr. Hook: Do you consider that the insufficiency of the appropriation has hampered the Commission in any way, in beautifying the valley or for the safety of the trees? A. Well, it has, in this way: They had to employ less men, and, of course, they did less work. There is a great deal of trimming and cleaning of land that should be done there; brush, and logs, and stumps, and things should be gotten out. They have improved one place by trimming up the evergreens. They trimmed it a little too high to suit me; I got out and showed them how to do it; that is one of my branches of business—trimming trees—and I understand how to do it. If they had more money they would employ more men, and beautify more ground in one season. They built some road there: they drew the gravel out of the river and made an elegant road, clear up. They drew the gravel out of the river and filled this up in some places two or three

feet deep, which was a great improvement. In the height of the season I believe there should be a sprinkling cart, the roads should be sprinkled.

Q. To keep down the dust? A. Yes, sir; to keep down the dust in the height of the season.

Q. Wouldn't it benefit the State if a great deal of that jungle underneath those trees was removed, for the accommodation of tourists, and campers, and others in there, so they could have free access in and out under those trees? A. I think so; yes, sir. If it was mine, and I owned it privately, and had money to clean it up, that is what I would do; I would make a regular cleaning out.

Q. Don't you think it would be an advantage to the State to remove some of those old fences that are tumbling down, for the improvement and benefit of the valley? A. Well, I don't remember seeing a great deal of old fences, because there is a road to travel, and you can go afoot outside. It might look better if you had prettier fences, but you have got to have some fences to put your stock in. Now, these saddle animals are all turned loose at night, and they have pastures for those; and I guess some butchers there have pastures, maybe, for their beef cattle.

MR. TULLY: Speaking with regard to turning those horses loose; those men let the privilege of running that saddle train there? A. Yes, sir.

Q. Now, suppose that those fences were all removed, and those saddle men were required to keep their animals up or else keep them at some convenient point outside of the valley, which would enable the Commissioners to remove the greater portion of those fences, except some small pastures that would be needed perhaps around the hotels to keep milk cows in, or something of that kind: don't you think it would be the better policy to require those lessees to keep their horses after that style than it would to devote so much of that valley to the use of the horses of those men who own those privileges, those saddle trains, and leave the valley more open to campers and visitors who visit the valley and would like to have such accommodations as they would find by finding more open pasture land? A. Well, it would be impossible for a man to keep a pack train there, even at the prices they charge now, and keep their animals up, if they have to pay 2 cents a pound for hauling stuff in. That would make the freight on hay \$40 a ton; and barley costs them 2 cents to haul in; and say they got it for 1 cent, that would be 3 cents. A horse would nearly eat his head off every day; that is, he would eat the price off—\$3 a day. When I was in there first I paid out just about \$1,000 in the valley, and I thought in the first place that the charge was outrageous to pay \$3 a day for a pony—a little mule—to ride over those trails; but after I had been there three or four days I made up my mind that it was not. I found them very sure-footed; hardly ever, if ever, an accident occurs, and they have got to have the pasture there. They can't take them out of the valley to pasture them, because it would take them all next day to get them back. People want to start very little after sunrise on these trails. I don't remember of so terrible much fencing there.

Q. It is in evidence that there is perhaps over half or two thirds, or between half and two thirds, of the area of the floor of the valley that is actually inclosed? A. Well, that I couldn't say.

Q. I don't mean from wall to wall. I mean what is called the meadow land of the valley? A. The meadow lands are most all inclosed, but they have not been cleaned out, and they had them at first so they could cut hay, but the brush has grown up so that they cut but very little hay. The animals can eat it out while they cannot cut it out. I never thought about those fences, and yet I know a fence annoys me terribly; but I never

thought about that, and when I go in again I will give them a good looking over. I have heard a good deal about those old fences, and an old fence is a perfect eyesore to me. There is a piece of wet land there between Barnard's and where Cook's old hotel was, and the road runs right near the base of the mountain, and leaves this between that and the river, and we talked about changing the road and bringing it all up and moving the old dilapidated buildings. In fact, they have taken down Leidig's old building. That was an old rattletrap of a building; and Cook's hotel is taken down. They were built in an early day and built cheaply. In Leidig's hotel you could hear each other wink from one room to another, they were so loose—just a piece of canvas between; and down by the store and blacksmith's shop they talked some of making a cleaning out there, and have the shops that are necessary put out of the way somewhere, and in just as good a place for them, as where they are now. They have got chicken coops and everything of that kind, which is an eyesore. That is near Barnard's. I consider that is the prettiest spot there is for a hotel—where Barnard's hotel is.

MR. HOOK: Do you or do you not think it would be an advantage to the State if there was less charged for the privileges in the valley, and the State made a larger appropriation to maintain and carry on the Yosemite? A. Well, I don't think the charges are exorbitant there for what they have. I think they charge 3 per cent on the cost of the hotel.

Q. I mean the saddle trains and everything there in the valley? A. My idea is—I was coming to that. We ordered a survey, you understand, for a tramway, and they don't report very favorably, but I know a good tramroad can be built up those mountains, just as well as I want to know. There is no "can't" in it at all; it can be done. That will do away with those saddle trains. I had a survey made that would lead to Glacier Point and one up to Yosemite Falls. Now, you let any company go in there and build it, but restrict the charges to a certain point. Let them make the round trip for awhile for \$1, to go up and back for \$1. There is many a person that would go up twice or three times or oftener, and it would be a good investment for any company to put in those tramways. The height—what is the height there right against the Stoneman House?

MR. HUTCHINGS: It is three thousand two hundred and fifty-seven feet. A. So the tramway would be maybe three times as long.

MR. HUTCHINGS: It would be about three miles? A. No; it would not require that much.

MR. TULLY: What do you think of the propriety of the State building those tramways and leaving them free of toll? A. Well, I would rather a company would do it. It is almost impossible to do anything with public money but what there is a job in it.

Q. You are aware of the fact that if there is anything in the world that an American objects to more than he does death and taxes, it is to paying toll? A. Well, I guess they would rather pay toll on that road than to pay \$3 to ride a mule up there. That is my idea of it.

MR. HOOK: My idea in asking the question is this: Whether by any reduction of the charges in the valley, if the State was to make a sufficient appropriation, it would not be better for the tourists going in the valley if the privileges were reduced? A. There are no tourists that go there—but very few if any—that object to the prices there. Sometimes you will find a class of folks that are trying to see how cheap they can travel. They want to see it all in a minute. You have seen that illustrated on the stage. I know that there is one play where a fellow visits Europe. He gets out and looks at the statuary, and away he goes; and

he does Europe, and gets back in about a week. We had an illustration of that with that gentleman from Minnesota. He figured every way in the world to make the trip as cheap as possible. He hired a team at Merced, and got the fellow down to \$10 a day, and he fed the team; and he cracked them through, he got into the Yosemite in the afternoon, and he looked around, and in the morning he hitched up and took a drive, and they had done Yosemite; and they were charged exorbitant prices for toll. He came up to the Capitol to see me. When I came to investigate, they had charged him \$5 more than—not more than they had a right to—but they charged him on the road which runs into the valley, which they spent a great many thousands of dollars on; and that they refunded. I don't know but our Secretary tried to keep it, though, to buy stationery with. No; I feel anxious to have those tramways built, and I would rather a company would own them, and let the Commissioners of the valley hold them in hand, and keep them from charging exorbitant prices. If it can be done for four bits a round trip, I would put it at four bits; I don't know what it would cost.

MR. TULLY: Suppose the State built it and adopted the same plan that it has adopted with regard to the Stoneman House; that is, let the contract, let it out to competitors, and then regulating the tolls upon the payment of a certain interest upon the amount invested in those places, say 3 per cent on the investment—on the amount of money it would take to make the tramway—regulating the tolls upon the same basis that the letting of the Stoneman House is done; just enough to pay a certain percentage upon the money that the State had invested in building those tramways, and regulating the tolls accordingly upon the same principle? A. Well, you and I can go in there and build it good, first rate, and build it for nearly half what the State will build it for. If men work for the State they only work eight hours a day, and any hours they work over they have to have extra pay for.

Q. My proposition was to let it out at the minimum? A. You mean to let the contract?

Q. Let the contract out at the minimum. A. Not let it be known as State work, but contract with persons to build it for so much and deliver it to you?

Q. Yes. A. It might be done in that way.

Q. And then regulate the tolls so it would pay a certain interest? A. There is considerable wear and tear. You would have to put the per cent at a very high rate on that.

Q. The object of these questions is simply to get at the proposition whether or not it would not be better for the State to furnish those conveniences, by letting out the contracts where it was deemed to be the better policy, yet let the State hold control of them and regulate absolutely all charges to be made upon them, upon the basis of a certain interest upon the investment? A. No; I believe it would be better for a company to build them, and let the State control the company. There should not be any cut-throat process. Yet, it might be better. That thought never occurred to me. I am willing to do it either way; to have it done.

Q. You think it ought to be done? A. I think nothing in the world would be such an acquisition to that valley as those tramways. Don't you think so, Mr. Hutchings?

MR. HUTCHINGS: I have not thought that way; no.

THE GOVERNOR: You would rather a man would be two hours riding a mule than be fifteen minutes on a tramway?

MR. HUTCHINGS: No; I have not thought that. I have thought it would

take so much of the poetry out of it. I don't mean the poetry of riding up, but the pausing by the wayside. A. That could be done on a tramway as well as on a mule. There is no poetry in riding a mule. They are adopting them in all countries in Europe; in the great places of resort, they have them.

MR. TULLY: Have you any further suggestions to make? A. I don't think of anything. I am willing for you to question me.

MR. TULLY: Anything you deem a matter of interest that you would like to say, either about yourself or the Commission with which you were associated; any suggestion from you would be agreeable? A. Yes, I could make a great many suggestions about what should be done there. I should want these tramways built; and if the committee think best for the State to build them, advertise and have it done so. Another suggestion I spoke of to one of the members of the Assembly to-day: we should have control of the land for twenty miles, at least, around the rim of the basin, to protect it ourselves.

Q. Outside of the grant? A. Yes, sir. And if we don't, there will be a time when there may be some trouble. Twenty miles will cover the watershed. That is enough. There is no good farming land in there, unless there is a little up on the stream that forms Mirror Lake. There is some farming land in there. I don't think there is anybody will have to be bought out; and I spoke to-day to some of the members of the Assembly about getting up a joint resolution and asking our members of Congress and our Senators to ask Congress to give us the complete control of that country. You know through there in the fall it is desolation itself. Just after the sheep have left there the sheep herders burn the entire country off. They do it so they will have good grass in the spring when they come back; and it made my heart ache, and it kept aching all the way through, to see the terrible destruction of young trees and timber. You would see large trees on fire. It is destruction of the worse kind. Eventually it will clear the timber out entirely. If we could get control of that entire watershed, we could then keep the sheep out of there, and the vegetations growing up would hold the snow, and the snow would last the summer through and keep the waterfalls supplied with water.

MR. HOOK: The destruction of timber causes less snow and rain to fall? A. No; it is not that.

Q. It does naturally? A. Yes, sir; but the altitude is so great that it will snow and rain there any way. Now I have just got news from my son, who is up at my mountain ranch in San Diego County; the snow is a foot deep there, and it is snowing there now. That is away up at an altitude of five thousand feet, I presume. It is so in the Yosemite, on the entire range of mountains, while in the valley we don't get it. If we can keep those vandals out of there, it will protect the timber so there will be a new growth; it will grow as thick as it can be.

MR. TULLY: Do you think the undergrowth would preserve the snow? A. Yes, sir.

Q. And keep those springs through the summer? A. Yes, sir; that is what it does; it keeps the falls supplied with water.

Q. The undergrowth you have reference to more than the trees? A. Well, the trees of course help, but the undergrowth, where it stands so thick, the snow is solidly packed underneath it, and clear up through it, and you take that vegetation all away, and the sun strikes it and melts it off, so that by July or August it is all gone; whereas, if the vegetation stands there, and the sun can't strike it only as it creeps through, it will

remain there the season through. I hope your committee will do something about that to-morrow.

MR. HOOK: It is a scientific principle that the destruction of timber lessens the rainfall, and causes it to come irregularly in the season? A. Yes; I have always heard that. Now the Ohio River used to be a good navigable stream, and now it is almost impossible to navigate it.

MR. ROBINSON: Were you there in 1884? A. In 1884.

Q. Were you aware that that was one of the most remarkable seasons that they ever had in the mountains, say in twelve or thirteen years, so far as snow falling is concerned? A. No.

MR. ROBINSON: Yes; that was so. The valley was for the first time in my recollection of it, and the only time that I have ever been there—some meadows, the Cook meadow, for instance, was completely overflowed in June, with water standing from three and a half to four and a half feet deep.

MR. TULLY: Do you think it would be advisable to take those toll roads all in? A. I don't know how to answer that, sir. I presume there are some toll roads there they would like to sell. I know I would if I owned them.

Q. What do you think about the policy of the State getting possession of those rights; in other words, buying them out and making those roads free? Obliterating everything in the shape of toll roads leading into the valley? A. Well, it might be a good idea. As I understand, the Washburns hardly ever charge toll. That is nothing that should keep the people of our State from visiting the valley; but you won't find hardly one man in a hundred that has been to the Yosemite. It is too near to them. I don't know how much those toll roads are worth, or what they ask for them. If they could be bought, not for what they ask for them, but for what they are worth, it might be a good idea for the State to buy them. That railroad will be carried through as far as Clark's, and I never want to see a railroad go any nearer the valley than that. As Mr. Hutchings says: "That would spoil the poetry of it." There is no such road in the world as that road from Clark's to the valley. There should be a very little amount of money appropriated to care for the Mariposa trees. I spent some little time there the last time I was up. If a fire did get in there it would be a holy terror.

MR. TULLY: I understand there is room there for the investment of some money very judiciously? A. I would want to go over it with two or three men and give that a very thorough examination, to know how to protect it. It is just one mass of trees and logs and underbrush and dead limbs that have been dropping for years. It has been very well watched so far and the fire kept out, but it would be a terrible thing to have a fire; I think it would ruin the entire grove. Any amount of those trees have been badly burned years ago; we are well aware that the Indians burned everything.

Q. They burned them every year, and there was not an accumulation of brush and debris? A. I feel that there should be a very little appropriation made for the care of those big trees, for they are the wonder of the world. The idea of sitting on a stage, with fifteen or twenty passengers, and six horses, and driving through one of those trees! It is not many places in the world that you can do that.

C. D. ROBINSON.

Being sworn by the Chairman, testified as follows:

MR. TULLY: Mr. Robinson, you have resided some time in the Yosemite Valley, I believe, have you not? Answer—Yes, sir.

Q. Are you very well acquainted with the valley, and its surroundings? A. Yes, sir.

Q. How long have you resided in the valley, at different times, more or less? A. I went there first in August, 1880; have been there—well, I have been there every season since.

Q. Are you acquainted, more or less, all over the valley, with its surroundings? A. Yes, sir.

Q. You have had some business connection, more or less, with the Commissioners and their management, and have had some knowledge of the management of that valley? A. Yes, sir.

Q. I believe you stand somewhat in the relation of a complaining witness? A. Yes, sir; I am so looked upon.

Q. You have read these charges here, I suppose; you have sworn to them? A. Yes, sir. Which charges have you got; the first or the last ones?

Q. I have the last ones. A. Yes, sir.

MR. HOOK: Are those similar to the ones you swore to first? A. Yes, sir; condensed.

MR. TULLY: The first charge here is: "Misapplying public moneys and appropriations." That applies, I presume, to the Commissioners who have had the management of that valley? A. Yes, sir.

Q. Now, Mr. Robinson, if you know anything within your own knowledge of any instance in which moneys have been applied or appropriations squandered, please state to the committee, as concisely as you can, in what manner those funds were misapplied or misappropriated? A. Well, it will be necessary for me to make an additional statement, at the present time, to the testimony that I gave before the Senate committee.

Q. We have nothing in the world to do with what you said before the Senate committee. What you said there is a matter of record. What we desire is for you to state what you know, if anything, about the first charge of misapplying public moneys and appropriations? If that involves any statement you made elsewhere— A. Well, it does, to a certain extent.

Q. But it is an original statement here? A. I had granted to me by the Commissioners, in 1885, the privilege of building a studio in the Yosemite Valley. I have an official letter in my possession to that effect. That privilege I was never allowed to carry out. Mr. Mills raised objection to my being allowed to build for myself, upon the ground that it would lay the foundation for a future claim against the State. But he authorized, or he advocated, rather, that the Commission should build a studio for me, to the amount of money that it was decided or declared between Dr. May and myself that we thought the building would cost. I was officially granted, or at least the Commission officially took notice of my claim, and agreed to build for me, in June, 1887. The provisions were not carried out. In August they again gave this same permission, with orders to the executive committee to carry the work along. It was not carried out. In the meantime, after the first permission was given to me, my occupancy, my tenancy, was to have begun on the first day of January, 1886. I found that by some unquestionable hocus-pocus unknown to myself, my term of occupancy had lapsed, so Mr. Madden stated. I had never had any occupancy; had nothing to lapse. I sent a plan of the proposed building to the Board

of Commissioners, and never heard of or never saw that claim until last year, in June. It was returned to me about that time by the Board, after they gave me permission to occupy the little building that I had formerly had. I had permission from Mr. Raymond, who was at that time Vice-President of the Commission, to occupy during the winter, during the time between—my permits commenced the first day of January and expired the first day of January following; a yearly lease. I had permission during the time that I was making application for the renewal of my permit, the season of 1886 and 1887, to allow my goods to remain in the little building that I occupied. I had reason to suspect that the Guardian of Yosemite Valley—

Q. Mr. Robinson, the charge is: "Misapplying public moneys and appropriations." A. I have a statement to make in refutation of a statement that was made by Mr. Dennison, before your committee, a short time ago. You will find in a few minutes in what way it is relevant. I had permission to occupy that building. Some time after the first day of January, 1886, that building was violently entered and all my stuff taken away. Mr. Dennison made the statement here that he had a key, and opened that building with that key, and obtained legal possession. If that is the case, I would like to have Mr. Dennison produce the key that will unlock that lock; another one that will unlock this lock. [Producing two padlocks.] I put two extra locks upon the door of that building to hold it. On the seventh day of January I locked the door and took those keys and put them in my pocket. These keys will unlock those locks. The first charge of misapplication of public funds comes in regard to this building. That building was removed by the orders of some one on the Board of Commissioners, so I am given to understand, from the place that it occupied when I left it in November, 1886, to the other side of the Cosmopolitan. That building, as I understand—I am told that the books of the Commission will show that over \$400 were expended in fitting that up for the occupancy of Mr. Dennison as a Post Office. Now, I was paying the State of California \$20 per season for the rental of that building. As I further understand, Mr. Dennison paid nothing. The State never spent one sou marquis, the Board of Commissioners never paid one cent out in improvements on the building when I occupied it, and it was in a most disreputable condition. As quick as Mr. Dennison obtained it, as I understand, the State spent over \$400 in fitting that up for his use as a Post Office. I was not aware that the State of California was in the habit of building Post Offices for the general public. That is the first charge that I have of misapplication of public moneys. I understand, also, that \$30 was paid for the construction of a common carpenter's tool chest out of the funds of Yosemite Valley by the Guardian at that time, Mr. Dennison. The next charge is in regard to the buildings that were erected for Coffman & Kenney on the farm.

Q. You say you understand? A. Yes, sir.

Q. What is the ground upon which you base your statement? A. Common rumor. I have had no access to the books of the Commission, and never have demanded it. I think you better let that go as the first question.

MR. TULLY: I asked him upon what he predicates his knowledge of that fact? A. I would not testify to that as a fact, but I think that I received that from Mr. McCord himself. I think that Mr. McCord told me in the valley that he found on the books of the Commission \$30, charged for the making of a common tool chest; carpenter's tool chest; paid in day's labor.

Q. Do you know of any other instance in which moneys have been misappropriated? A. Well, that would pass to the second. If this gentleman

wishes to ask me any questions in regard to the first, let him do so. The second instance, I mean; the misapplication of funds.

Q. Do you know of any other instance outside of that; besides the two that you have mentioned. A. No; I don't know—I wish to state another instance, though. There was some trouble—I naturally made some fuss about my studio being entered and removed, and everything being taken from there, and I brought about the question, agitated the question again as to my being allowed to have a studio in the valley; building a studio. It was then that they agreed to appropriate this money for the building of a studio for me; that is, the Board approved of the building of such a studio, and gave the executive committee power to proceed with its construction. Those orders were never carried out, for reasons best known to themselves. So in October, when the Governor and other members of the Commission were in the Yosemite Valley for the purpose of accepting the Stoneman House, I presented the members of the executive committee, who were then present, a statement as to the cost—as I was required to do by the Board—a statement as to the cost of each separate piece of timber, almost, for the construction of that building, and a contract from a reliable, reputable carpenter in Big Oak Flat, to build the same. I presented that, or sent it in to those members of the Commission present, through the Guardian, Mr. McCord, and he brought to me a request from Mr. Griffith that I meet him on Leidig's hotel porch that evening with a view of settling the matter. I did so, and Mr. Griffith took me one side—it was quite dark; he took me one side and we sat down, and he says: "Mr. Robinson, I have conferred with the Governor"—he didn't mention any others—"I have conferred with the Governor upon this subject, and we have both decided that inasmuch as the law of the State in reference to Yosemite Valley—the laws of the valley—that all moneys derived from the lease of privileges shall be expended in the improvement and preservation of the roads leading to the valley, and the property therein contained, that it would not be legal for us to build a studio for you; that we have no right to appropriate one stick of the State's timber, or spend \$1 of the State's money, in the construction of such a building for you." He says: "I therefore decline to have anything to do in the matter." Well, I asked him: "Mr. Griffith, isn't there a room or a building that I can occupy another season, around here?" He said he didn't know of any such. I asked him if I could be allowed to import a sectional building, and put it up upon any piece of ground, subject to the orders of the Commission for removal at any time; and he told me he didn't see how I could; that that was a matter that would have to be laid before the entire Board, and he could not pass upon that at all. In fact, I got nothing. I find afterwards that the Commission has spent, in building houses for Coffman & Kenney, certain sums that are laid down in their report for this year; and I certainly could not see how, if it were wrong for them to appropriate a single stick of the State's timber or a single dollar of the State's money to build a little house for me, how so much could be appropriated for the use of that saddle train plant. I have here photographs of the different buildings, if you would like to look at them, that were built for Coffman & Kenney.

Q. We will look at them after awhile? A. That is a portion of my testimony: the photos that I have.

Q. You can put them there? A. You can look at them at your leisure, whenever you choose.

Q. They will be put there as part of your testimony, if you desire it. These are the only instances you know of? A. Yes, sir.

Mr. Hook: That is all you know of the misapplication of or misappro-

priation of any public moneys? A. Yes, sir; that is all I know of my own knowledge.

Q. Do you consider that the removal of that building and taking charge of it by the State was a misapplication and misappropriation? A. I do, sir; most decidedly.

Q. And making it a Post Office? A. I do; most decidedly.

Q. Does not everything that comes under the Commissioners' control— isn't that State property? A. I am not aware that they have ever acquired that property by any legal means. That building belongs at this present time to Henry Washburn, if he chooses to claim it.

Q. Is there any property that belongs to private parties? A. There is a good deal that belongs to the Board by purchase. The rights of private parties have been recognized by the Commission, because they have been requested at sundry times, to either take down their buildings or the Commission would do it for them.

Q. The charge is the misapplication of moneys and appropriations? A. Yes, sir; that is the charge.

Q. Do you consider that these statements that you have made are misapplications of public money? A. I certainly do. If it is a misapplication of funds, and if it is against the laws of the land for them to appropriate or spend \$300 for my use, it is certainly a misapplication of funds for them to spend three times that amount of money in the erection of buildings for the use of other private individuals. I don't see anything in the condition of Yosemite Valley that demanded the erection of those buildings for the exclusive use of Coffman & Kenney, unless it was simply to move their plant nearer to the Stoneman House. Besides, you must remember that I had permission from the Vice-President of the Commission, Mr. Raymond, to occupy the building during the winter. I was told by him that if the Commission desired to use that building they certainly would do so; that my property would be well taken care of, but that I should be notified by the Board before any action was taken to open the that building, to open it or remove it, or anything of that kind, so that if I had any other place where I wished to store my goods I could do so.

Q. Have you any such authority in the shape of a lease? A. No; that was verbal authority given to me to occupy that building by Mr. Raymond, in the presence of Dr. May and Mr. Madden. The entire executive committee was present when that permission was given.

Q. When did this take place? A. This took place some time in April, 1886, I think. I never saw Colonel Raymond but once afterwards.

Q. Were all the present Commissioners sitting then as Commissioners? A. No.

Q. How many of the present Commissioners were there? A. I will have to get a book and have to hunt up the names, one by one. I can't remember. Mr. Goucher was not on the Commission at that time. Mr. Truman was not on the Commission.

MR. TULLY: It doesn't make any difference, so far as this matter is concerned, who were on? A. The reason I bring that charge against the Board is this: That was properly a private grievance between Mr. Dennison and myself, and I don't like to bring that up, on the ground that it would look as though I was trying to vent my spite on Dennison; but inasmuch as the action of the Commission sustained Dennison in taking that building away from me, I am obliged to bring it up as a charge of misapplication of funds against them. That building is worth \$50; that building was offered to me for \$50; Mr. Washburn agreed to assign all his title and claim to me for \$50, and I certainly think it is a misapplication of funds to spend \$400

of the State's money in fitting up a shell that really is not worth over \$30 to-day. The building is twelve by eighteen feet in size. I don't assert of own knowledge that the Board of Commissioners did spend \$400 on that building, for I have not seen the records of the Commission to show that they did or they did not; but it was common rumor all through the valley.

MR. HOOK: You don't know whether they spent a dollar or not, so far as your own knowledge is concerned? A. I suppose the building might have taken wings and got there, and built itself on its own foundation. I didn't see them do that thing. I don't know that they opened it.

MR. TULLY: "The destruction of public and private property in the Yosemite Valley." To what does that charge refer? A. Well, in the first place, it refers to the tearing down of George Anderson's cabin, built with his own lumber, hauled from the outside of the valley; built with the permission of the Board. That cabin was taken down. The lumber was taken charge of by the Board of Commissioners, and Charlie Anderson told me, when he was here a little while ago, that he never received a cent for that in any way, shape, or manner. I asked him if he had ever made any demand for any money. He said he never had. He said Mr. Goucher had all his papers, and he left the matter entirely to him.

Q. What was the condition of Anderson's house when it was removed? A. Well, certain parties have testified that it was in very bad condition; I testify that it was in as good condition as any other building of the kind in the valley. I was in the cabin I think perhaps a month before it was taken down, and I saw no trouble with it at all.

Q. What would you estimate its value to be? A. I am no judge of values of that kind and could not possibly estimate.

Q. Couldn't you estimate whether it was worth \$500 or \$20? A. No; I could not. I have no more idea than a child four years old.

Q. You don't know, in destroying that building, from a pecuniary standpoint, how much was destroyed, if it was destroyed at all? A. That is a question you will have to ask an expert; I couldn't tell.

Q. Do you know what became of the material of which that house was composed? A. I heard that all the material was carefully piled and numbered, and each stick, as it was used by the Board of Commissioners, was accounted for. That is all I know about it. I never saw anything of the cabin.

Q. That was a destruction of private property. Have you any other instance? A. Yes, sir.

Q. State it to the committee as concisely as you can? A. There was a cabin that belonged to Lembert, a little bit of an out-of-the-way, good-for-nothing concern, torn down in the valley, on the ground, I believe, on the part of Dennison, that it was an eyesore and in the way. It was not an eyesore unless you hunted it out; and there are certainly places in the Yosemite Valley that are inhabited at the present time by the Italian laborers, that are more deplorable to the eyesight than even a blacksmith shop, that are not torn down. Lembert resented it very much, because he sometimes would like to go in there and lie down for three or four weeks, in the fall of the year. A letter was sent to him, directed to Lembert at Soda Springs, care of Mr. Sinning. There was no possible way for him to receive the communication at all. It was returned to Dennison. The superscription upon it was, "Returned to the writer."

Q. Do you know what the value of that was? A. It was not worth over \$2 50, I guess.

Q. Was there any other private or public property that you know of? A. Yes, sir; Mr. Fagenstein had a little house in Yosemite Valley that he

claims he paid \$100 in cash for, that a certain woman who was regarded as a disreputable character in Yosemite Valley occupied, and sold photographs for Fagenstein. After she left the cabin was locked up; everything was taken out. I believe Fagenstein had been notified not to employ her for the following year. In the winter, when Fagenstein was gone, Dennison removed that place and piled the lumber up back of Fagenstein's house. Mr. Fagenstein was very mad and very wrathful about it, but he refused to do anything about the matter.

Q. Any other instance? A. No; not of tearing down. I know of an attempt of that kind that was frustrated. I know that Mr. Dennison notified Mr. Cavagnero, according to Cavagnero's statement, that he wanted to use the building that Cavagnero occupied at the present time as a store-house.

Q. That notice did not constitute a destruction of property? A. No; it was an attempt at destruction, that was all. That is all of the private property that I know of.

Q. Do you know of the destruction of any public property? A. That would refer to tearing up the wood walk, in the first place, that went from the Cook hotel up to Barnard's. It was very much out of repair, but not by any means dangerous. It could have been put into complete repair, and was a very popular place, especially for a stroll in the evening; and was torn down in 1885, I think it was; the summer of 1885.

Q. Torn up? A. Torn up; used up; burned up, I believe. The State laid claim to that. I suppose that it was there.

Q. Have you any idea of the amount of damage from a pecuniary standpoint? A. No; I have not. I think that perhaps Mr. Hutchings, if you interviewed him, could tell you better than I can; but I know that in the following season—1886—during the high water, the river backs up in several channels, and fills in spaces in that meadow, and it was impossible to cross that meadow, to make a short crossing between Barnard's hotel and Cook's hotel for upwards of two months. In 1884 it would have been impossible to have crossed the meadow for nearly all the season, on account of the high water; tourists and all were obliged to go through the roads, around under the rocks, making the distance nearly one third longer, and traveling in dust all the way from five to eight inches deep in places. It was a very great inconvenience in the valley, to tourists, as well as people that lived in the valley.

Q. We are talking about the destruction of it now. Do you know of any other instance? A. Yes, sir; the tearing down of the Folsom property; the tearing down of the Black property.

Q. Of what did they consist? A. The Folsom property was a building that was down at Cook's old hotel, formerly the Black property, and was used some time for extra rooms when the house was crowded. Rooms were used I think occasionally for tourists in times of great rush. There was also a bath-room attached to the house, and there had been a Postmaster's room and Wells, Fargo & Co.'s Express office contained therein.

Q. Were they public buildings belonging to the State? A. Yes, sir; that belonged to the State. Portions of the building were in good repair. Portions of that building have been used in the Coffman & Kenney building.

Q. What has been done with the materials? A. Certain portions were used for Coffman & Kenney's building; the balance, I don't know what was done with it. In fact, when I left Yosemite Valley it lay upon the ground, a good share of it.

Q. Have you any idea of the value of that? A. No; the original value can be easily ascertained.

Q. I ask you if you know? A. No; I don't know what it was worth when it was torn down.

Q. Is there any other besides those? A. Yes, sir; the tearing down of the Cook hotel, the Black property. That was another building. I believe that the State originally paid \$12,000 for that property. It was regarded as worthless and unsafe, and all that sort of thing. It is my opinion that if the Stoneman House hadn't been erected some means would have been found to make that place habitable. That is the condition the year before it was torn down, when it was inhabited by Cook. [Showing photograph.]

Q. That is called the Black property? A. That is the Black hotel property; and there it is after demolition. [Showing photograph.]

MR. GOUCHER: I will call your attention to the fact that that has been referred to, in the testimony of the other witnesses, as the Cook hotel—by all the witnesses that I have heard? A. I call it the Cook hotel; the old Black property.

MR. TULLY: What does this photograph represent? A. That represents the Cook hotel after it was demolished.

Q. You offer these in evidence, do you, Mr. Robinson? A. Yes, sir.

Q. What does this represent? A. That is the final destruction of the property; burning it up; the loose material; of course, after it was torn down, it was not worth much of anything.

Q. Do you know whether any use was made of any portion of that? A. I don't know. I don't think there was. I am not aware of it if there was.

Q. Have you any idea of the cash value of it? A. I believe that the property originally cost the State \$12,000.

MR. HUTCHINGS: \$13,000.

MR. TULLY: How long before its destruction was it purchased by the State? A. I believe that those buildings were purchased in 1874, were they not?

MR. HUTCHINGS: Yes, sir.

MR. TULLY: How long after that before it was destroyed? A. It was destroyed last fall, 1888; fourteen years.

Q. Has it been inhabited and used in the meanwhile? A. Yes, sir.

Q. By whom? A. When I first went to the Yosemite Valley, Mr. Black was in possession of the property.

Q. To what use was it put? A. The next season that I went in there it was run by parties by the name of Wright and Cook. They failed, and Mr. Cook was obliged to take the lease out of their hands, and from that time up to early in the season of 1888 Mr. Cook used it as a hotel.

THE CHAIRMAN: Do you know what rent the State was receiving for that hotel? A. I don't know, sir; I have heard it stated that they were getting from Cook \$550. Whether that is so or not I don't know. I wish to speak of another case, the Leidig hotel. There is the destruction of the Leidig hotel property. That piece of property was, in my estimation, very good. That has been—nearly all of it has been utilized in the construction of an addition to Barnard's hotel, and also on the buildings that are occupied by Coffman & Kenney, the buildings of the Royal Arch farm.

Q. Is the title to the Barnard property and the Coffman & Kenney stable in private individuals or is the title in the State? A. The title is in the State.

Q. Was it so at the time of the destruction of this property? A. Yes, sir; it was, I believe. That is the Leidig hotel [showing photograph]. I think that photograph was taken some four or five years ago, by Mr. Fiske, when it was quite a new hotel. Here is a photograph taken of it just prior to its destruction; here it is in the first stage.

MR. TULLOCH: How long prior to its destruction? A. I should judge, by what Mr. Fiske told me, perhaps a month, may be not so long; that is the condition of the hotel when they first commenced to take it apart. Here it is further along. I was permitted by the Guardian to use some of the posts, and beams, and scantlings, pieces of them, in the construction of stages when I frescoed the chapel in the Yosemite Valley, this fall, and I found those sticks of timber just as new and as sound as any new timber I ever saw cut—those pieces.

Q. That is the property you say was utilized in fixing up? A. Coffman & Kenney's building and the Barnard hotel. I think that Barnard got the windows and doors.

Q. Do you know whether or not at the time this property was taken down, when the Leidig hotel was demolished, whether the title was in private parties, or whether it was in the State? A. In the State, I believe. I believe the State owned the property.

Q. They had extinguished Mr. Leidig's title, if he had any? A. So I understand. Of my own knowledge I don't know anything about that.

Q. How did they extinguish it? A. That I don't know, sir.

Q. Do you know that they did extinguish it? A. I do not; I suppose it to be so: it is so commonly understood.

MR. TULLY: Is there any other instance you know of the destruction of public or private property? A. Yes, sir; there was the destruction of the private property of Mr. Coffman, at the time that Mr. Dennison took possession of what was known as the Cosmopolitan saloon for a residence and Guardian's office. He cut the bath-room pipes all to pieces; the pipes leading to the bath-rooms, cut them up, so Mr. Coffman told me at the time, so they were utterly valueless; removed the property from the inside; tore down the windmill and overturned the boiler—well, stove things up generally. Mr. Coffman, I believe, was going to make some considerable trouble about it, but I suppose he had reasons for not doing so.

Q. Was the title at that time in the State or in individuals? A. I believe that the State owned the property; at least it was so understood that it was State property. It was rented to Captain E. S. Utter, the son-in-law of Mr. Coffman; but all of the interior fittings were claimed as the private property of Mr. Coffman. Mr. Coffman claimed it as his private property. I was told by him that by orders of some of the members of the Board, he was refused admittance even to his own safe, to get at his own private business papers, by Mr. Dennison.

Q. Do you know whether he set up any claim, or presented any claim for damages? A. Not that I am aware of. I have heard that the way he was compensated was by giving him the exclusive privilege thereafter to run a saddle train in the Yosemite Valley for \$1,200 a year. That was the common report and rumor.

Q. You don't know it to be a fact? A. No; Mr. Coffman never so stated to me.

Q. Is there any other instance that you know of? A. No, sir.

Q. The next charge is: "The unnecessary destruction of timber in the Yosemite Valley." What do you know about that? A. Well, that, in my mind, is one of the most serious of all the charges that I allege. I think that there has been a most wanton waste of timber in the Yosemite Valley. I don't suppose that the Commission did it wantonly, though; but I think that the destruction and the havoc has been very great.

Q. Give us what the facts are with regard to it? A. In the little meadow adjoining Fagenstein's gallery there were some of the prettiest cottonwood trees. There was one of the prettiest fringes that I ever saw on a river

bank. That was trimmed out and cut out in the Summer of 1887, until the trees that are left standing look more like a row of gigantic hop poles than anything else. There is not the first particle of anything that would indicate a desire to do anything in my mind, but to turn the whole of that place into a sort of a clearing or ranch. It looks to me more like an attempt to clear land than to benefit or to help a public park in any way, shape, or manner.

Q. How much timber was destroyed? A. I couldn't tell you as to that. The tree cutting was going on all summer long—pretty near all summer long.

Q. One hundred trees, or five hundred, or one hundred and twenty-five? A. No; I think, perhaps, large and small, or all kinds together, there might possibly have been one hundred trees cut out in that one particular spot. Then directly opposite, across the river, there was a grove of cottonwoods; a beautiful little grove—a beautiful little shady grove—and at one time—well, say in July or August—it was quite a resort for camping parties, before that public road was fenced up. They used to camp in there to get out of the heat; the summer heat. That was entirely obliterated. Barnard had a man by the name of Laf. Barnes at work for him over two months, working that grove of cottonwood up into stovewood for his own use. That is the way it looked after they commenced to saw the logs up [showing photograph]. Cottonwood trees were cut down out of that grove at least from thirty-six to forty inches in diameter. The stumps are standing, or were standing there when I left in November, and could attest the truth for themselves. I don't know what the area of that timber was, or how many trees it contains, but I should think there must have been an acre and a half, or two acres, that was completely destroyed. Then over at the further side of the same meadow there was an entire group of young pines cut away; stumps left standing, say thirty inches from the ground. I think there must have been cut out in that place—Oh, there must have been cut out in that place, over two thousand trees, right there. Many of them were so little—the little trees—that I think you could pull them up.

Q. Saplings? A. Yes, sir; and some of them, well, say up to six inches in diameter. Here is a view of a portion of that little grove. Now there are similar clearings to that further down the valley, in what is known as the slaughter-house pasture, slaughter-house meadow, and below that again. Some of those have been obliterated since by fire. But I know that I took Mr. Hendricks with me around the valley the same season that those were cut out, and he expressed himself to the effect that he thought it was rather a tough looking sight to see trees like that cut out of the Yosemite Valley; that it seemed to be so utterly useless; there didn't seem to be any object gained by so doing; simply seemed to be opening a greater area of meadow land, but no practical object gained thereby; there were no views opened up.

Q. You consider it unnecessary? A. Entirely.

Q. Did you consider it a wanton destruction? A. Well, no, I don't, exactly. A wanton destruction, in my mind, would be the fact that the Commissioners would go to work and clear that timber out just simply for the sake of so doing; for the fun of seeing it fall. I have an idea in my mind that it was a misjudgment; bad judgment on the part of the Commissioners.

Q. Do you know of any object being assigned at the time of cutting it down? A. It was popular rumor there that they were cut down to let in the sunlight, and afterwards plow them up and make more hay acreage; that was all. Here is a view across the river near where that little grove

stood, showing the way those trees stand up now, one after another; no undergrowth, and nothing to relieve them at all. If that is a benefit to Yosemite Valley, then of course I have nothing further to say.

MR. GOUCHER: What place does this represent? A. That is right alongside of the road, just by the Hutchings cabin, just across the other side of the road.

Q. Did I understand you to say this was cut away to open any view? A. No; not that I know of. If it was, it has failed of its object. The idea has been that in cutting down a good many trees lower down, you might see lower down upon the walls. The perspective is so slight, the view is so slight that you would get from any distance, that you could not see possibly over twenty or twenty-five feet lower down, your eyes would rest on another range of trees, and before you would get done, you would cut them all out. Then there was cut out a straight line, a lane of trees, to give a view of the lower Yosemite Falls from the back of Barnard's hotel. There is a lane thirty or forty feet wide cut away, and around the base of the Fall an enormous amount of timber, little and big, of all kinds, were taken away, and some of the most remarkable trees were removed at that time that I ever saw anywhere. That was done for the purpose of giving a view of the Fall, or the lower jump of the Fall. The Fall comes down about three hundred feet, and strikes a ledge and makes a bound of about two hundred feet more and strikes a pool at its base. You could see all but about, perhaps, seventy-five feet—the lower portion of that Fall—when this lane was cut through. Well, now, that was cut out to give a view of that Fall, say for four weeks. After that time, at the end of that four weeks, it would have been utterly useless, because the water begins to get so low that there is no view obtained from there that would compensate for the destruction of the timber. It used to be, with a certain class of tourists, a very prominent walk over to the base of that Fall, and sometimes, by following the wall up a little, you could get up near the Fall itself and look back. Well, now the open portion in front of the Fall is at least twice as big as it was. It makes a poor spectacle now, compared to what it was formerly. Around the Stoneman House, in the immediate vicinity of the Stoneman House, it was undoubtedly necessary to cut down a good many trees. But as the Governor himself testified before you to-night, he expressed himself as put out, very indignant at the way timber had been slaughtered around the Stoneman House. Mr. Cook told me himself, some time early last year, that it was a matter of serious concern to him, the way they had cut out timber; that it let the heat in on the house. The house stands in what is naturally a warm place, anyway, in the summer time, and it made it so open that the house is very warm. Now, that meadow has been cleared up in front of the Stoneman House, I should think, down towards Barnard's, fully half a mile. Here is one view in front of the house. That is quite a distance down, at the lower end, looking up towards the house. Here is another view. Mr. Fiske took several negatives. Here is a view looking down the valley several years ago, taken in winter time. That will give you some idea of the quantity of brush, the way the brush grows in the Yosemite Valley. There are the roads; there are the branches stripped of their leaves. Now, you can see from that. I should judge that there was no timber to spare in the Yosemite; very little timber that needs to be cut out. It only requires a change of a few feet to get almost any view you want in Yosemite. There are several places trimmed up, and cut out a little mite, but in my opinion the Board is not justified in cutting out timber in the way they have done. Here are certain groves that are

trimmed up. Here are more [showing photographs]. Here again. If views of that character improve Yosemite Valley, I have nothing to say. Now, sir, here are some natural views of Yosemite, where no cutting out or trimming has been attempted; some of the natural tree groupings. Here is a group of cedars.

Q. Do you desire to submit all these? A. I should like to have them returned to me. Here are some more cottonwoods that have been taken away. Here is one particular, peculiarly beautiful place, over near the foot of the lower Yosemite Fall, that was utterly obliterated. There is nothing left at all.

Q. Not even of these trees? A. No, sir; not one. Here are some trees that are cut out. There is a sample of some of the beautiful trees that are cut out because the decay has entered them. There are but very few oaks in the Yosemite Valley that do not show the marks of decay. If all are to be removed because there are dead portions upon them, you would have to take out all the oaks in the valley. There are some ferns and brakes that have been removed. Here is a little road view that fortunately is left in Yosemite. It strikes me that that is a beautiful drive. I think that people come from all over the world to see that sort of thing. Here is another very remarkable grouping of dead trees. That was removed the first winter of Mr. Dennison's guardianship. Here is another one. Now, these pictures, many of them, were taken by Mr. Fiske, because parties who came into the valley and saw those—many of these trees were right alongside of the road—asked him so to do.

Q. Has that tree been destroyed? A. Yes, sir. Here is another one. That is one of the most peculiar trees that I ever saw in my life. Here is another one, showing the attempt of the pine trees, if wind breaks off their tops, showing the way they attempt to get their original height again. Here is a group of oaks that stands in front of the old Cook hotel. Those are all intact as yet, as far as I know. In opening that view of the foot of the lower Yosemite Fall, there is an oak that was removed. Here is some timber that was felled to protect the new barns and out-buildings erected for Coffman & Kenney. Now, on the other hand, there is a place that might be opened up with advantage. It is in my estimation one of the finest views in the Yosemite Valley, if those trees were removed so that you could have an unobstructed view of El Capitan and Bridal Veil Fall. I asked Mr. McCord this season, as long as they were cutting out so much, why they didn't cut out some brush by the Bridal Veil, and he told me the Commission was so busy improving around the Stoneman House, that they would not have an opportunity to do that. That is an oak tree that was felled; that one that you have in your hand that I submit would be worth, in almost any gentleman's private park, in any eastern city, probably \$10,000 or \$15,000.

MR. TULLOCH: What was the diameter of that tree, four feet? A. Well, yes, I should think so; over that. It is perfectly sound. Another one just as near Barnard's hotel, not quite so large as that but equally sound, was cut down. They were worked up into firewood. Those were cut down out of Barnard's pasture. I noted that there were some pleasantries exchanged between parties at Barnard's hotel. Barnard inquired of Dennison, in regard to this tree cutting—Barnard wanted to know when Dennison would finish up cutting that lane of trees to the foot of the fall. He said that he intended to go to work the next day if Robinson and Hutchings would let him. I think that we two were perhaps regarded as the cranks on trees and tree cutting in the valley.

MR. TRUMAN: As I understand it you would be in favor of cutting these trees in this picture? A. Yes, sir; by all manner of means.

Q. Now in the estimation of many wouldn't that add to the general vandalism alleged? A. I don't think so, because it would open up one of the finest views that there is in the Yosemite Valley by all odds.

MR. TRUMAN: I judge that is the cause alleged for the cutting down of trees generally? A. That I suppose; but there is no way that you can get either to the right or the left and see that view. It is impossible. I tried to make sketches there several times, but it is an impossible thing, because there are trees in so many directions. Then again right from the river bank looking up the valley, there is all that brush needs to be cut out because the Bridal Veil Fall is half covered up by it.

MR. TULLY: Does that cover the extent of your knowledge with regard to the supposed unnecessary destruction of timber in the Yosemite Valley? A. Yes, sir; that covers all the material ground that I know of.

MR. GOUCHER: When was this grove opposite Barnard's cut? A. That, I believe, was cut in the spring of 1887, at the same time that the Fagenstein meadows was cleared out.

Q. Are you sure it was in 1887? A. I am quite sure it was in 1887; yes, sir.

Q. Who was the Guardian at the time? A. Mr. Dennison. I think that was cut in June.

Q. You spoke of a grove of cottonwoods in connection with the cutting of Fagenstein's; a grove covering about an acre or an acre and a half? A. That is the one I have reference to.

Q. That is the one you allude to now? A. Yes, sir.

Q. That and the wood cut opposite Barnard's was all cut in the spring of 1887? A. Yes, sir. Then I noticed, when I went into the valley in the spring, that away down below there had been considerable timber cut out; and during the whole summer—it made very little difference where you would go around the valley—you heard the ax, clear down as low as the iron bridge.

Q. What was done with the timber? A. I suppose it was worked up into wood, the most of it; that that was large enough to be of any worth. Some, I understand, was trimmed up and piled, and used for fence railing; some little timber.

Q. This view opening the lower Yosemite Falls, when was that timber cut? A. That was cut in 1887.

Q. That was cut after the June meeting of the Commissioners? A. I believe so; I believe that was cut just after the Commissioners adjourned.

Q. Do you remember when the timber around the Stoneman House was cut? A. Of course a good deal of it was cut before they put in the foundations for the house. That must have been in 1886, some of it.

Q. Now, that which was cut before they put in the foundation for the house, was that necessarily cut? A. Well, some of it was. There was a lot of timber up above the house, alongside of the orchard, young trees, young pines—an entire swath cut out—completely opened, and piles of pine poles laid there on the ground that high. [Indicating.]

Q. Was that cutting necessary? A. No, I don't think it was.

Q. You can see that the trees that were taken from the ground on which the foundation stands were necessarily taken out? A. Yes, sir; there is no doubt of that.

Q. After the house was substantially completed—not entirely completed, but the frame all up? A. Yes, sir; there were a good many trees that were necessarily taken out.

Q. Do you know why they were taken out? A. I think they were taken out to keep them from falling on the house; I think very wisely, too—many of them; though it really hurt me to see some of the trees go. I have got some photographs of some of the trees. There was one cedar, in particular, that was a very peculiar and wonderful tree, that had to come out; I remember when it fell. But I don't think the clearing up of the meadow, away beyond and below the Stoneman House, was of any use or any avail. There are trees standing there now, in front of the Stoneman House, pine trees—I have two in my mind at the present time—must be at least one hundred and twenty-five feet high, with the branches lopped off forty or fifty feet above the ground. They present an awful appearance.

Q. Do you know what the object was? A. I suppose one so that you could see under them, and another to keep the branches from falling; though I don't understand how that was necessary.

Q. In the case of pine trees in the mountains, don't you know the lower branches are very often brittle and liable to fall? A. Yes, sir, if they die; yellow pines, especially; but at the same time it seems to me it would be better to remove the tree entirely than to disfigure it in that way; it always looks to me like a mutilated person; it is no longer, in a place of that kind, a fit tree.

Q. It would be better to take the tree out entirely than to cut off the dead limbs? A. Yes, sir; if those limbs of those trees are dangerous, if they are liable to fall on anybody, it would be better. Now, in regard to that, you know where the first cyclone was?

Q. Yes. A. Then you know, up above here, two winters ago, you know there was another one struck, just above George Anderson's cabin, and took out a whole lot of sound Douglas spruce. You remember right below that there was a bunch of dead trees, some of them over two hundred feet high.

Q. I know there was a bunch of dead trees. A. About half a mile this side of that bunch of dead trees there was an oak tree standing, with a limb, I should think, at least fully sixteen inches through, that reached clear across the road—overhung the road; and for three years, during the entire term of Dennison's incumbency, there rested upon that limb, touching it only on two spots, a dead oak branch that was at least thirteen inches through, and in any sort of a gale or any sort of a breeze, there was nothing on earth to stop that from dropping on anybody that passed underneath. Not being on very good terms with Mr. Dennison, I told several parties, among others Mr. Barnard, to ask Mr. Dennison to remove that limb, because it was dangerous. It got so that people in the valley who knew those trees were afraid to drive up by those trees. The very minute Mr. McCord came into power, I requested Mr. Barnard to speak to him about the same thing. Mr. McCord very wisely went up and removed that stuff; he saw how necessary it was to take it away.

MR. TULLY: The next charge here is: "Clearing and plowing valley meadow land?" A. Well, outside of the farm—that was plowed up and was used before I went to the valley; I think, myself, that all of that sort of business in Yosemite is very unfortunate; very unfortunate indeed. It is getting the valley so that I have no hesitation in saying that there is not in the valley bed at the present time the first vestige of a resemblance to a public park. In fact, Mr. Mills made the remark to me, at the close of the June meeting this year, he says: "I might just as well vote with the rest of the Board, Mr. Robinson. They are determined to turn this place into a cow pasture as quick as they can, and the quicker they do it and get it done the better."

Q. Then you think generally the clearing and plowing up of that valley is an injury to it? A. Yes, sir.

Q. The valley meadow land? A. I think it is an irreparable injury, too. I have heard it expressed here that there was no design or desire—

Q. What proportion does that plowed up valley meadow land bear? A. The acreage I couldn't give you, possibly; impossible to arrive at any just idea of how much land is plowed up, or cleared, or fenced, by asking anybody to give the proportion. The whole valley is substantially fenced, where you can go about, and a good portion of that, at the present time, I suppose, is plowed up. The entire Leidig field, as I understand it, is plowed up.

Q. Do you know who plows it up? A. Coffman & Kenney, I believe. I know that a gang-plow was brought into the Yosemite Valley last fall for the purpose of clearing land. I heard Mr. Coffman one night talking to Mr. McCord, and he was telling him where he proposed to commence to break up the next day. He seemed to regard it as simply a ranch.

Q. Your objections in that charge refer generally to the clearing up and plowing up of that land? A. Yes, sir.

Q. You can't give us an estimate of what proportion? A. No, sir; I couldn't give you an estimate of how much is plowed up. There is a view of the upper end of the valley; that will show you what open ground there is when snow is on the ground. This is a view of the lower end looking around the other direction. You can see how much ground is open there naturally. You can see by that there is a very big amount of the bed of the valley that can be plowed up if so desired.

Q. "Debarring the general public from the joint and legal use of the valley." To what does that refer in particular? A. That refers particularly to the fencing up of the valley and the appropriations that have been made heretofore for campers' use. Here is some fencing [showing photograph].

Q. That is the wire fence and picket fence? A. That is some of the fencing. Here is some more.

Q. What falls are those? A. Yosemite Falls. That also is the Yosemite Fall from a different point. Here, again, that is near Barnard's hotel. It shows how the fences cross in every direction. Here, again, away up in the upper end of the valley, near Mirror Lake, near the Lembert cabin. Here, again, about a mile below that place, crossing the valley at another point; and here is a very wide area—well, that must be right back of the Stoneman House—showing the fences all the way through, as far as you can see. Now, here is a view taken in the Cook meadow in 1884 that I found among my pictures. That will show you what kind of a sea of water there was in that meadow; and when that water was highest, at 12 o'clock at night, it was just level with the top of the wood walk, and that wood walk was probably on an average four feet. That is the character of fencing. Here is a portion of the new fence that was built to surround the Cook meadow. Here is the corner line of the fence. That is the east line of the fence looking down the road towards Barnard's hotel. This should properly come under the head of sanitation. That dead horse laid in Yosemite Valley in that condition, and is there now, or at least was on the fifth of November; nothing but bones left; and you can see that a barbed wire fence was built across his carcass by some men in the valley, and yet they did not bury him. That horse lay and went to pieces in that kind of shape, and exhaled all his odors for the benefit of the people in the valley, opposite Barnard's hotel, within three hundred yards—yes, within two hundred and fifty yards; and the stench that arose from that

horse in the night you could pocket some of it and carry it away. It was almost solidified. Dennison was requested several times to bury the horse, but he didn't do it. Here are some more fences. This is the Leidig meadow under fence. This is looking up the valley again from another portion, showing the fence. Really, the whole valley bed is practically under fence.

Q. It looks to me as though the valley is pretty near all fenced? A. Yes, sir; the valley is pretty near all fenced; and the best way to find that out is to go and see for yourself.

MR. TULLOCH: How many miles of fencing would you judge there is in the valley? A. I have no idea; it is impossible for a person who is not accustomed to building fences to judge. I know that within a space of two miles, three years ago, I counted nine stretches of fence. If I had a large map I could show very easily. This fall, after the leaves disappeared from the trees, part way up the Glacier Point trail, I looked down upon the valley, and I was surprised to see ranges of fence near the river bank in different places, that I had never noticed before.

Q. That is what I understand that charge refers to. "Debarring the general public from the joint and legal use of the valley." A. Yes, sir; that is what I refer particularly to. There are no decent provisions made for the use of campers in the valley. I had some photographs when I was here before showing the campers' ground.

Q. What effect does those fences and inclosures have upon the convenience of tourists and campers? A. Well, I can show you that at once, what effect those fences have and the restrictions under which campers are placed. Here are some photographs that were taken by Lieutenant Harris, of the First Artillery, in 1884. There is a portion of the campers' pasture. That is the First Regiment of Artillery in camp [showing photograph]. Here is another portion of the same meadow.

Q. What does this represent? Is that Mirror Lake? A. No; that is the Merced River; and here is another piece, and here is one that will show you the quality of the feed contained therein better than anything I can possibly show to you.

Q. What portion of the valley does that represent? A. That is up near the Harris place, what is known as the general campers' pasture.

MR. TULLOCH: Is that open to campers now? A. Yes, sir; these are some campers [showing their places there]. They were forced to go there to get into the shade. Every time a tree is cut out in that valley bed it opens more to the sun, and when people come there to camp it drives them further into the rocks; and as the average temperature in Yosemite Valley in the summer time, from observations—I kept the temperature there for two years—is about 80°, it gets pretty warm in the sun. It ranges all the way from 72° to 96°, and up as high sometimes as 104°; and down in that gulch, with no wind—of the last three or four years the breeze that we used to depend upon coming regularly at eleven in the morning seems to fail us, and we have that intolerable heat from about nine in the morning till about five at night. Here is another camp [showing photograph]. That is the way campers' horses get their pasturage, fastened to ropes, that way, and they have to buy their hay. There is another camp. This, I think, would tend to show one of the ways in which the public are debarred from the use of the valley. I know that a few notices of that kind sent to me I should consider was a debarment [showing a letter].

Q. You offer this in evidence? A. Yes, sir.

Q. These other pictures also? A. Yes, sir; I will say one thing: that I think the present Board, some of the newer members, have made up their

minds that that sort of thing is a little mite too severe, and they have a notion to ameliorate their condition a little bit, and not be quite so hard on people who want to do business in Yosemite. That I offer also as evidence. I think Coffinan & Kenney have got the most of the valley under fence, at least they use most of the valley that is under fence, and have the privilege as well, to turn their stock upon the public domain outside, but I have to pay at that rate for two weeks for a horse. [Witness read following bill:]

C. D. Robinson, Yosemite: To Board of Commissioners to manage the Yosemite Valley and Mariposa Grove of Big Trees,
To fourteen days' pasturage, September and October, one animal75 cents.
Received payment.

W. E. DENNISON.

I imagine the State of California is in pretty small business when it goes into that sort of thing. Those other papers that you looked at were given to me by Mr. Drew himself. I think that Mr. Drew thought that it was pretty small business at the time; the man that was helping to bring the tourists to Yosemite Valley, to make him request permission to drive in and out of the valley.

Q. "Holding annual meeting with closed doors, in violation of State laws." What do you know about that? A. I know that in 1884, such a thing was done: in holding a meeting in the Sunday school chapel, the meeting was held with closed doors. I know that in 1885, after the passage of the law to the effect that all meetings should be at all times open to the public, that June meeting was held with closed doors. The entire public were kept outside for one afternoon and a portion of the next day, waiting for a verdict in their several cases.

Q. Was that a meeting of the entire Commission or of the executive? A. No, sir; that was a meeting of the entire Commission, a Board meeting.

Q. They met there for a regular meeting for the purpose of transacting business? A. Yes, sir; the law states that any and all meetings of the Board of Commissioners shall be at any and all times open to the public.

Q. I asked you if they were there in one of their regular meetings? A. They were there in one of their regular meetings; the only regular meeting they held in the valley during the year.

Q. They held their meeting there upon one evening with closed doors? A. One afternoon and a part of the next day, with closed doors.

MR. TULLOCH: Didn't Mr. Goucher, the attorney, on that occasion have to ask permission to come before the Board? A. That I couldn't say. Mr. Goucher could tell that better than I could.

MR. TULLY: Are those the only instances? A. Yes, sir; those are the only instances that I know of my own personal knowledge.

Q. Do you know of any persons applying at the doors at that time for admission? A. I do not. I know that at that time certain parties went to the door and tried it and it was found locked.

Q. Whilst they were in session? A. Supposed to be in session. It was the time appointed for session.

Q. Those are the only instances? A. Those are the only instances.

MR. TULLOCH: The pasturage of which you speak; was your horse pastured outside of the fences? A. No, sir; inside. The State pasture was occupied that year by Mr. Dennison, under lock and key; two brass padlocks. There was a brass padlock at the eastern entrance, and another brass padlock at the northern entrance to the gate. There were no turnstiles that year. You had to climb through or over the fence and go on foot. When Mr. McCord became Guardian, the very first thing that he did was to remove those padlocks—staples, bolts, and everything. I know that

in order to take my horse out of that field I had to go to Mr. Dennison's office and go behind the door and take the key off from the nail; go out of my way to get the key to unlock the front gate, and after I had taken my horse up and put her in the barn I had to come back again and put it away. When I left the valley this fall the marks were still to be seen on the fence posts where the staples had been driven to hold the chain of that padlock.

MR. TULLY: "Violation of State laws regarding the granting of exclusive privileges in the valley?" A. Well, the first instance of that kind that I know of, that I had recorded, was the refusal to grant to a man by the name of Anderson—we knew him as "Little Anderson" in the valley, J. A. Anderson—the privilege of conducting the business of selling woods and ferns and bulbs and such things. He had a tent, and he made application for the privilege of conducting that business. Mr. Sinning was conducting the wood workers' business, and Mr. Sinning told me that he requested the Board not to give Anderson the privilege of conducting that business; he didn't like him, and he would cut into his business and injure him. I find in my book here this letter:

YOSEMITE VALLEY AND MARIPOSA GROVE OF BIG TREES, }
GUARDIAN'S OFFICE, YOSEMITE VALLEY, CALIFORNIA, October 27, 1885. }

MR. J. A. ANDERSON, *Yosemite*:

DEAR SIR: In accordance with the requirements of Rule 1, Rules and Regulations, it is the request of the Board of Commissioners that you make known, through this office, on or before November 1, 1885, your wishes with reference to permission to reside or transact business within the Yosemite Valley for the year 1886, when the issuance of permits will proceed as rapidly as practicable.

Yours truly,

W. E. DENNISON, Guardian.

Mr. Anderson made such request; made application for the privilege of conducting that business, and on the same date he received this letter:

GUARDIAN'S OFFICE, YOSEMITE VALLEY, October 27, 1885.

MR. J. A. ANDERSON, *Yosemite*:

DEAR SIR: Your request for the privilege to sell woods or art work for the same within Yosemite Valley has been refused by the Board of Commissioners.

Yours truly,

W. E. DENNISON, Guardian.

He told me they would not allow him to put up his tent. He gave his tent in charge of a man in the valley—Mr. Staples—and left; went to Australia, and died there within a few months.

Q. What other instances, if any, can you give? A. Well, there is Mrs. Glynn's case. She has testified to that herself. She was restricted to keeping two boarders, by which she could not live. I understood that the hotels complained that she kept boarders at a lower rate than they did, and that they paid big rents, and that she paid nothing. Her rent was arbitrarily reduced from \$50 a year to \$1, and then she was told that she couldn't keep boarders because she paid no rent. I know that she was restricted to the keeping of two boarders, and I have a letter to that effect here.

Q. Did she ask for the reduction of that rent? A. No, sir, she did not. She was officially notified, without any volition or will of her own, that her rent was reduced.

Q. You know those facts? A. Well, I will convince you of that in a minute. This is the way that I know that her rent was arbitrarily reduced:

GUARDIAN'S OFFICE, YOSEMITE VALLEY, CALIFORNIA, June 9, 1885.

MRS. ELIZABETH GLYNN, *Yosemite, California*:

MADAME: Your communication to the Yosemite Commissioners was received with the following decision June —, 1885, at the regular annual meeting, namely, that the Board does not in any way whatsoever recognize or acknowledge your title to the residence or premises now occupied by you and known as the Hedges place. That your rent for residence and necessary ground about the same be and is hereby reduced to \$1 per annum; and that the right to let the stables and corral is reserved by the Board, whereof notice has been given to those persons occupying same, with instructions that they do now and hereafter pay all rents to the Board or its agents.

Very respectfully,

THE COMMISSIONERS TO MANAGE THE YOSEMITE VALLEY AND MARIPOSA GROVE OF BIG TREES.

By W. E. DENNISON, Guardian.

That was written upon the official paper of the Board; the official heading. Shortly afterwards, I find, on a piece of the same paper, with the heading torn off—Mrs. Glynn handed me this communication:

YOSEMITE VALLEY, April 26, 1885.

MRS. E. GLYNN, *Yosemite Valley*:

DEAR MADAME: By the requirements of your permit, you will not be allowed to board or lodge any but two men laboring in the valley, and I sincerely trust that you will see at once that it is to your advantage to comply strictly with the terms of said permit in all points, and avoid giving cause for complaint.

Respectfully,

W. E. DENNISON, Guardian.

Mr. Fagenstein made the remark to me two seasons, one after the other. During the winter when he was away—he had a rockery, made out of pieces of granite, behind his photograph gallery or studio, that he used to pose parties upon who came for photographs; groups taken, with the Falls in the background, sitting on these rocks. That rock fence was removed by Mr. Dennison. I think that was during the winter of 1886 or 1887. Fagenstein complained very bitterly to Mr. Dennison about removing the same. He cleared the ground all off; left him no place to pose his subjects at all; and Mr. Dennison got out of patience finally, and told him: "Mr. Fagenstein, you must remember you have only got a permit for a year, and you better not make too much fuss about this matter." Fagenstein did make a fuss, and finally it was compromised by the Guardian putting up a rustic fence for him, made out of logs and bits of trees, which stands there now. But Fagenstein complained, and he has complained the last year to me, that it utterly ruined his posing point; that he had no place whatever to pose his subjects. I know that practically Mr. Hill has had the privilege of having the only artist's studio there was in the valley. He has had the only studio. I have been allowed to occupy by the year a little building, as I have told you, that was not fit for a man to occupy at all. There had been heretofore so much partiality shown in Mr. Hill's favor, that he himself felt as though he was obliged to ask certain members of the Board that they reduce my rent from \$20 to \$1, and put me on a footing with himself; Mr. Hill was ashamed of it himself, as I understand it. Mr. Hill tells me now that even though he has been granted the privilege to build, the same as I had—the privilege to move his studio and make improvements—that when it comes to the test point, and he undertakes to do it, somehow or other he can't do it. At the same time that I made application for a privilege to build a studio, Mr. Harlow asked me to make a plan for a new blacksmith's shop, and he applied for the privilege of putting up a blacksmith's shop. It was granted to him, and he put up the worst looking rattletrap that ever was built in Yosemite Valley,

right alongside of the road. I was told by members of the Board, or a member of the Board, that that was only a temporary contrivance, and that he intended to put up a better shop. That temporary contrivance lasted two years. Mr. Harlow gave up his business in the Yosemite Valley and went away and left that temporary contrivance, and the following winter it caved down. My petition at that time was not considered, as I have understood since, because they didn't think the plan that I offered was sufficiently artistic for the use of the valley; though at the time I made the statement to members of the Board that that was only offered simply as a rude outline of what I intended to build. I intended to build a nice house.

Q. Do you know of any other instances? A. No; I don't know of anything that is worthy of consideration.

Q. Do you know anything in the nature of violating the State laws, regarding the granting of exclusive privileges in the valley? A. No, sir; nor I don't know that it would be necessary to uphold that charge at all, because Mr. Mills has admitted it. That is acknowledged by a member of the Board.

Q. "Reduction of rentals to the prejudice of the State's income?" A. The hotel rentals have been reduced one half. At the same time, when the leases of the small tenants expired, their rentals were increased one half. The small tenants in the Yosemite Valley are entirely dependent upon what comes to their share, or falls to their share from the hotels. If the hotels have a bad season, the other tenants have virtually nothing. If they happen to get at outs with any of the owners, or any members of the owners families of hotels in the Yosemite Valley, they are liable to turn around and advise tourists not to deal with those parties. They are entirely at the mercy of the hotels, and yet their rentals were increased. I know that I have here in my book notices that were served upon the photographers in Yosemite Valley, upon Fiske and Fagenstein, to the effect that their rents would be \$20 per annum, for the privilege to take and vend photographs in the Yosemite Valley. But that referred to only each single privilege. For instance, if Fiske sold photographs at his own private residence, he would have to pay \$20 a year for the privilege. If he sold photographs as well at Barnard's hotel, he would have to pay \$20 a year for the privilege, and did have to pay it for one season, until finally he determined that he would not and resisted it, and it was given up; and it was the same with Fagenstein. I think that perhaps the clearest way would be to read one of the notes. It will explain itself better than I can:

GUARDIAN'S OFFICE, YOSEMITE VALLEY, CALIFORNIA, September 9, 1885.

MR. GEORGE FISKE, *Yosemite*:

DEAR SIR: All interested parties will take notice that during the year 1886 the sum of \$20 will be charged for the right to vend photographs at each several place, and that a permit to take or vend at one specific place will carry with it no right for another.

By order of the executive committee of the Board of Commissioners.

W. E. DENNISON, Guardian.

A similar notice, similarly worded, was served upon Gustave Fagenstein, also a photographer in the valley.

MR. TULLOCH: Did Mr. Hill receive a similar notice? A. Mr. Hill is not a photographer; he is a painter; no notices of the kind have ever been served on painters at all. Coffman & Kenney's rent was reduced from \$500 to \$250 a year. Coffman & Kenney rented the Harris property for \$500 per annum. During the fall the old buildings were consumed by fire, and they lost sundry sacks of grain and some saddlery material, and one thing and

another. They considered that the loss they sustained by that fire justified them in asking for a reduction of their rental for the year 1888; it was reduced at their request from \$500 to \$250 for the year 1888. Immediately another petition was put in before the Board, asking that the rent be reduced to \$250 for the year 1889, which was also granted.

Q. It has been testified here something about an offer that Harris made for the same property; a much greater sum, I believe. Do you know of any offer made by Harris for that same property? A. I know that Harris stated to me that he made such an offer, and showed me at the same time the offer he made. He showed a copy of the same.

Q. What was that offer? A. I believe that offer was \$1,750. And he agreed, furthermore, in contradiction I think, to the Governor's statement, that horses should not be kept up in the valley and let out for the rates that they now charge, \$3 per day. Harris, in that offer, agreed to keep his horses up and feed them hay and grain, and see that they were groomed every night, so that they could be given to tourists in the morning in the ordinary condition that livery horses are in the city. I know at the present time, those horses are turned out in the night and allowed to grope around and get such food as they can, and they are brought up in the morning, and if they are cleaned, they never show any marks of it. If you take your hand and slap one of them on the side, it will come off all dirty and set the dust flying all over. Among my papers I have several newspaper clippings which would go to show that those horses are neither sure-footed or safe at all times.

Q. Were the privileges that were granted to Coffman & Kenney for that \$500 the same privileges that were refused to Harris for \$1,750? A. I think they were, sir. I think not only that, but I think that Coffman & Kenney have more privileges; that is, they have more acreage than ever Harris asked for. I am not aware that Harris asked for any other pasturage than what his farm would afford for his horses. I am not aware that he asked for any more ground.

Q. At what date was that? A. When Harris made that application?

Q. Yes, sir? A. I think that was for the year 1887. I am quite sure it was. I don't know for a certainty, but I am almost positive that it was the year 1887.

Q. Do you know that he made application at the same time, made this tender and offer at the same time that it was let to these other parties? Do you know that at the same time it was let to other parties that Harris had an offer pending? A. Only from Harris' statement.

Q. You conversed with Harris about it? A. Oh, yes; I conversed with him considerable.

Q. Do you know of any other instance? A. No, sir; excepting my own. I have heard members of the Board say that the only instance they know of the reduction of rentals to the prejudice of the State's income was the reduction of my rent from \$20 to \$1.

Q. Coffman & Kenney then, in the first instance, were to pay \$500? A. Yes, sir.

Q. And on account of the burning up of some material they had there, it was reduced how much? A. Half; to \$250.

Q. Is that the rental they pay now, as you understand it? A. That is the rental they pay now, I believe. That carries over until the first of January, 1890, I think—the year 1889.

Q. From your observation and knowledge there, they have more privileges and have a more advantageous position than Harris offered to take? A. Yes, sir; in fact I will tell you, I thought it was rather hard to restrict

me. I was told that it would be foolish for me to apply for over thirty by fifty feet of ground for my studio; but I thought it was a little mite tough that Coffman & Kenney should be given nearly the whole valley bed to conduct their business. It seems to take nearly the entire valley to conduct Coffman & Kenney's business, with the single exception of the small inclosures that are claimed by the State as pastures, and the hotel pastures.

Q. "Failure to recognize their own contracts." A. Well, the first would go back some considerable time, in reference to George Anderson.

Q. Be as brief as you can. A. George Anderson was requested by Galen Clark to get out timbers for a new bridge to occupy the place of the iron bridge at Barnard's hotel now. He did so, supposing that he was acting under authority of the Board; but after he got the timbers out, he told me that he saw a newspaper notice that a contract to build two iron bridges in the Yosemite Valley—the one he got out timbers for and the corresponding one down the river—had been let to the Gorrill Company. He prepared a protest to the Board. He told me that he never received any satisfaction from the Board of Commissioners at all in regard to the matter, but that afterwards the Gorrill Company asked him to resaw, reheat his timber, certain sticks of timber, to certain dimensions, for their use, and he did so, and that was all he got out of it. I have his protest, also the letters from the Gorrill Company to him in regard to the matter, which were given by him to me about a month before he died.

Q. They contracted with him to get out timbers for the bridge? A. Yes, sir; they did contract through the Guardian, who was also a Commissioner.

Q. And under that he did so? A. Yes, sir.

Q. Did you ever learn what the value of that work was? A. No; he never told me what the value of that work was; in fact, I never thought to ask him.

Q. Do you know what time he was employed in getting them out? A. All winter; he lost his labor, except a few sticks of timber.

Q. All he got for it was what he could get out of those parties who had the contract for the iron bridge? A. Yes, sir.

Q. They utilized his timbers in that? A. Yes, sir; no notice was sent to him by the Commissioners that they had let the contract to the Gorrill Company.

Q. What he got out of it was what he received from the parties to whom he sold his timbers? A. Yes, sir; the Gorrill Company bought a few sticks of timber.

Q. Do you know if he ever made a demand on the Commissioners? A. Nothing further than this letter protest. He made a demand through that letter. I can read it if you would like to hear it.

Q. I would like to hear it. [The witness read the following letter]:

YOSEMITE VALLEY, July, 1878.

To the honorable Commissioners of Yosemite and Big Tree Grove:

GENTLEMEN: Some time in October, 1877, Mr. Galen Clark, Guardian of the aforesaid grant, ordered me to go to work and get out timbers for the bridge to be placed across the Merced River near Barnard's. I proceeded to comply with Mr. Clark's request, and have been industriously engaged, with the assistance of two men and one horse, in completing the work required of me by said Guardian of the valley. Now, after I have faithfully complied with my agreement, to my utter astonishment I find the contract for building the bridge let to MESSRS. Gorrill & Co., and am politely informed that the timbers I have prepared for said bridges are not wanted. Now, I appeal to you, gentlemen, if I am to lose my time, work, and cost; those whom employed upon the positive agreement, request, and order of your legally and lawfully authorized agent, Galen Clark, whose acts and contracts have heretofore been recognized and sanctioned by your honorable body. I have in my possession written documents to show that there was and is a fair and legitimate understanding between Mr. Galen Clark and myself. Allow me to suggest that the honorable Board

of Commissioners could not and cannot afford to make a fair contract with a citizen who has spent many years in this his adopted place of abode and ignore that agreement, in the face of all fair dealings in law and equity. In conclusion permit me to say that all I want is open-handed justice. I am in limited circumstances, and dislike to have a wrong perpetrated upon me in this manner, and lose my hard and honestly earned dues, besides involving others. That is more than I can consistently bear with. Therefore you will please answer this on receipt, and as I feel satisfied in my mind that you will do the fair thing, I remain,

Your most obedient servant,

GEORGE ANDERSON.

Mr. Anderson stated to me that no notice was taken of his letter, his petition, and he never received anything at all.

Q. He lost his work? A. Lost his work entirely. The history of the Anderson trail is by this time familiar to you all, so there is no need to testify. Here is the letter that he received from the Pacific Bridge Company.

[Reading letter from Pacific Bridge Company to George Anderson, dated San Francisco, July 14, 1878.]

Q. Did you ever hear from Anderson what proportion of that timber he really utilized or transformed into such shape that it subserved the uses of that bridge? A. Only that which this letter calls for.

Q. You stated that he was all winter getting those timbers out? A. So he stated to me.

Q. From that labor he only received what few pieces are called for there, that were utilized in the building of the bridge? A. Yes, sir.

Q. Do you know of any other instance? A. I know that this year certain laborers told me that they were obliged to work ten hours in the Yosemite Valley, or not work at all. I have here a statement from a gentleman by the name of Charles V. Cross, attorney at law, Santa Fe, New Mexico. Mr. Cross was a gentleman out of health and out of money, and he went into Yosemite Valley and worked as a laborer, principally to obtain his health, and partially to obtain funds to get to Santa Fe. He told me he was obliged to work ten hours, or not work at all. The consequence was he didn't work a great while before he was laid up. Not being a laborer, he was not able to stand the work, and he told me that he figured up the matter in this way: that laborer's wages at the standard time, eight hours, were worth $31\frac{1}{4}$ cents; at ten hours they were only worth 30 cents; so they lost $1\frac{1}{4}$ cents on an hour every day, when they had to work ten hours. He didn't want to work ten hours. None of the laborers there wanted to work ten hours, as I understand from various sources.

Q. Was he paid for ten hours? A. He was paid by the hour for ten hours. I find here—I wrote down just what he said—"told me to go to work, and worked me ten hours." Those are his very words.

Q. What season of the year was that? A. This I think was—I think that he gave me this statement in July. Mr. Atkinson told me—I find it here that I took his conversation down—Charles Atkinson told me in September that men were working ten hours, per force; if they worked at all they had got to work ten hours, and it was at that time that Mr. Atkinson made the statement to me that he thought it was a shame to keep Italians and foreigners—men that were not citizens of the country, and Italians that were not of age—upon the work, and turn off good citizens; as he expressed it, good white men, Americans; and he gave me the names of certain ones that were to have been discharged Saturday night, which was within a couple of days of the statement he made to me; Hopkins, Miller, Tom Brown, and the two Moses, all those were discharged; all those were residents thereabout, and all voters, citizens, and taxpayers.

Q. They were discharged? A. Yes, sir.

Q. And those Italians and foreigners were retained? A. Yes, sir; they were kept on, and are kept on at this time. The labor in the valley is mostly conducted by Italians.

THE CHAIRMAN: Do I understand you to say that all these men that worked ten hours a day were paid for ten hours labor? A. That is the way that I understand it, sir, that they were paid by the hour. I find here a very peculiar letter addressed to George Anderson by Dr. Briggs in reference to this trail business. I would like to make a statement in regard to it; it is getting very dim:

ALAMEDA, October 15, 1881.

GEORGE ANDERSON:

DEAR SIR: The executive committee yesterday passed an order to have the trail on the north side of the Merced from the upper bridge built to Snow's. As soon as a contract can be written I will forward it to you to sign with any bonds which Colonel Jackson may think best to exact. Probably there will not be any. We will advance you the powder and fuse and caps you may need. My advice to you is to say not a word to anybody about the contract, but go quietly at work and make the best trail ever made in those mountains. You understand that the price is to be \$1,500. Do a first class job on this trail and we will give you plenty of other work to do. I think you ought to be building your cabin at once. If you wish to, I will send the contract very soon. Again let me advise you to keep your own counsel in this matter. Say not a word to anybody, but attend strictly to your own business. You will need to sign the contract in the presence of two witnesses, and select two judicious persons who will not talk about it. I am ambitious that you should do for yourself and the State the best job ever done in that valley.

Very truly,

M. C. BRIGGS.

P. S.—I will write you officially as soon as the contract is ready. This note is simply for your own information.

MR. TULLY: That has reference to that trail we have heard so much about? A. Yes, sir; that has reference to the trail. Anderson told me, just about the time that I left the valley, before he died, that he had been promised—I understood him to say \$2 50 a day—that he had been promised \$2 50 by Dr. Briggs on behalf of the Commission to complete that trail; and he says, "Old Briggs has lied to me systematically for the last two years. I am going to try and see if I cannot collect something from this Commission; but," he says, "Mr. Robinson, I will tell you one thing, it won't be a healthy thing for Dr. Briggs to come into this valley while I live here, for if he does I will lick him so bad that it will take a four-horse team to get him out of here with, and don't you forget it." And anybody that knows George Anderson, or did know him, knows whether he was able to carry out that threat or not. There is a granite boulder of about that diameter [indicating], Judge Tully, standing on a rock in front of Barnard's hotel. It formerly laid on the ground. George Anderson took that boulder up and laid it on that rock, and no man has ever been able to lift that boulder, except one, in the valley since; that is the man Louis that works there. He has been able to lift it. Anderson carried one of the sections of the lower iron bridge in his hands and laid it down on the ground, when they were building that bridge, and put it into place, where it was to stand. That weighed five hundred and twenty-five pounds, so I was told. This boulder—how much does it weigh?

MR. HUTCHINGS: Two hundred and thirty-four pounds.

THE WITNESS: It is not the great weight; it is the impossibility of taking hold of it. I don't think that that gentleman would have made more than one or two mouthfuls of Dr. Briggs.

MR. TULLY: This is the Anderson that died, I understand? A. Yes, sir.

Q. The brother of the man who testified here that he had tried to collect it? A. Yes, sir; the same one. That man died from want and exposure,

really brought on by want of wages that were justly due him for work on that trail. He died of pneumonia. George Anderson went to Mr. Sinning in the spring, when the sleet and snow was falling—a miserable harsh day; he says: “Mr. Sinning, I need money to buy food, and you will have to give me a job.” Well, Sinning told him: “I will give you a job. I want the front of my house washed off and cleaned off.” It so happened that he went to Sinning—I got a little ahead of my story. That was a pleasant day when he went to him. Sinning told him to go to work, and he went to work on the house, and this storm came up, and George kept to work during the rain, and sleet, and snow falling, and he was under the weather at that time, and Sinning begged him, he says: “George, don’t work any more; I will pay you just the same if you don’t work.” George said he had always earned his living, and he didn’t want charity from anybody; he would work for it. He was finally obliged to give up, and went in and sat down in Sinning’s house, and was taken with chills; and the building that I occupied for a studio he was using to do some wood work in the winter. He had permission from me. He went in that building and laid in his bunk, and they carried him away almost by force. Nobody in the valley except the Leidig’s seemed to care anything about the man. He laid there, and would have died without any care or any attention at all in the valley. When it was too late they took him down to Mr. Fiske’s house, I believe; took him down there, but it was too late, and he died from pneumonia, simply from want and exposure. He had nothing on earth wherewith to provide himself with the necessaries of life.

MR. TULLOCH: What were his initials? A. George G. Anderson. It was one of the greatest losses that Yosemite Valley ever sustained in the shape of a laborer or handy man. All that might be avoided if the Board of Commissioners ever saw fit to put a reputable physician into the Yosemite Valley. Mr. Hutchings has lost a wife and lost a daughter in Yosemite Valley; George Anderson has died. When I first went to the Yosemite Valley in 1880, there were only three or four graves in the graveyard; now that cemetery is pretty well filled up, and in nearly every one of those cases, as far as human foresight can look, a fatal termination might have been avoided if they had only a reputable, decent physician in the valley. To show how much it costs and how things of that kind are managed, there was a party hurt on the trail, I think during Mr. Hutchings’ incumbency. A lady was hurt; I think her arm was fractured. She was taken to the Glacier Point hotel, and it cost \$300 for one visit of a doctor to her, in the Yosemite Valley. Two or three cases have happened of the same kind, where they have had to send fifty miles for a physician.

MR. HUTCHINGS: Sixty, I had to send.

THE WITNESS: Sixty miles; and it costs various sums, all the way from \$150 to \$300 to get one visit from a physician. When you stop and consider that some of the most valuable lives in the civilized world go into the Yosemite Valley and out again, they are at the mercy of any accident; they are bound to lie there and die for the want of proper care. There is no drug store; unless a person has a medicine chest, there is not anything. Casualties of a light or serious kind are likely to happen any time.

THE CHAIRMAN: Are there any rules by which the Commissioners are obliged to furnish a physician? A. No, sir; they were so requested.

MR. KELLY: There is a rule, isn’t there? A. I am not aware of it; if we had one of their little books we could tell at once. I know that after the death of Mr. Hutchings’ daughter and wife, that when I was in Sacramento I had a talk with Dr. Tyrrell in regard to the matter, and Dr. Tyrrell agreed with me that it was a proper thing to do; and he said the State

Board of physicians would be only too glad to choose from their members a physician and have him stay two or three months, provided the stage companies would give them transit, and they would give their services; and Dr. Tyrrell directed a letter to Mr. Hutchings, to reach the Board of Commissioners. No action was taken in the matter. I don't know what became of the letter. So any one of the most eminent upon the staff of physicians of the State of California might be had, or might be had at the present time in the Yosemite, the whole season through, if sufficient attention was paid to the matter.

MR. TULLY: I will ask Mr. Hutchings a question. Did you ever present that matter to the Board?

MR. HUTCHINGS: I did, sir.

MR. TULLY: Was any action taken upon it?

MR. HUTCHINGS: No; like everything else, it went by default.

THE WITNESS: It has been stated to me by a member of the Board—I don't know but by two members of the Board—that they occasionally received from tourists who went into the valley, communications containing advice as to how they thought the valley should be treated, and one thing and another. I was told by this Commissioner that one such communication was offered to them, and they read a few pages of what seemed to them to be humbug and balderdash, and he says: "Gentlemen, haven't you heard enough of this thing?" They expressed it, those that were present, that they had heard enough, and the document was unceremoniously tossed into the waste basket.

Q. They wanted no suggestions from abroad? A. It would so seem. That happened several years ago.

Q. The next charge is: "Withholding from citizens facts concerning the acceptance of the Stoneman House by the State, and illegally leasing the same." A. Well, we can dispose of the illegal leasing at once. Mr. Choynski has testified to that. That is all I know about the illegal leasing of the Stoneman House; the statement that I received from Mr. Choynski. All that I know about the illegal leasing of the Stoneman House is the statements that I have received at various times from Mr. Choynski. I was unprepared to hear Mr. Choynski's testimony. It was a surprise to me.

MR. KELLY: Was that communication that you referred to, from the State Board of Health? A. The State Board of medical men; the State Board of physicians. They proposed to send one from their ranks every two months.

MR. TULLY: All they asked was a free passage in and out and their board? A. Free transit and free grub, that was all they asked from the Commissioners.

Q. And they would give their services gratuitously? A. Yes, sir.

MR. HUTCHINGS: The Board of Commissioners did write to me to say that they did not see how they could do anything in the matter.

MR. TULLY: Mr. Hutchings, do you know whether or not there is anything in the conditions imposed upon them as duties, that imposes upon them a duty to look after that branch of the business?

MR. HUTCHINGS: They are empowered to manage the entire valley.

MR. TULLY: I think that that would be included under the general powers to manage the valley.

THE WITNESS: I have forgotten about that.

Q. "Withholding from citizens facts concerning the acceptance of the Stoneman House?" A. In regard to that matter, I received a telegram from the "Examiner," requesting me to report four or five hundred lines by telegraph, in regard to the proceedings of the Board of Commissioners

in the valley in October, at the time when they came there to receive them in the Stoneman House. In pursuance of that telegram, really being a member of the "Examiner's" staff, I went to the Stoneman House to take such notes as I could. Naturally, I followed the Governor and the balance of the Commissioners about to hear what strictures the Governor and the rest of the Board passed upon the house. I might say the whole valley was present. All that were curious were present, and wandering at will over the house; and I saw Mr. Griffith eye me several times very suspiciously. Finally I saw him—that was in the office of the hotel—I saw him step up to the Governor, and whisper in his ear. It is a thing, I presume, that had not struck the Governor before. He turned around, and he says, "Gentlemen, this is not a public viewing," or words to that effect. "This is not a public viewing of the hotel; this is a private inspection, and we would be obliged to all of you if you would vacate the premises." And they all proceeded to leave the house; and I asked the Governor, says I, "Governor, does that include members of the press also?" He says, "Most assuredly, sir; it includes everybody." And we all went out; all went away. I had an idea, and still have an idea, that the Governor was imposed on by Mr. Griffith in regard to the matter. I think that perhaps Mr. Griffith told him that I was there on purpose to make a carping criticism on the acceptance of the house.

Q. You were there for the purpose of taking items? A. I was there simply to collect items, that was all.

Q. During your stay there did you learn anything with regard to what was transacted, so far as it refers to this lease? A. No; nothing that refers to the lease. I learned, though, I saw, as the Governor stated this evening, he found some parts of the hotel were not to his satisfaction. I saw them test the floors in the office, and in some places they were nearly three inches out of line; and the Governor found considerable fault with various matters and things. In fact, it struck me that they were rather surprised to find that the Governor was so good a judge of buildings and the putting of them up as he was. He was inclined to be very rigid in the inspection and examination.

Q. "Rendering useless the district school of Yosemite Valley." Do you know anything about that? A. Well, I know that the necessary removal of Harris because he could not get the farm, and the necessary removal, also, of Leidig from the valley, has destroyed the district school; that is all. I am given to understand that it takes sixteen pupils to form a school district, and there were only six pupils that attended the school, to the best of my knowledge, all of this year, and I understand that they are not to hold any school this year.

Q. Those parties that were retired from the valley took away with them the children that were necessary to furnish the legal quota? A. Yes, sir. Barnard has two children, and Kenney has, I think, four, three or four, three who go to school; that is only five that I know of. I heard Mr. McCauley's name mentioned, but he lives five miles away from the school and three thousand two hundred feet above it.

MR. GARDNER: Still within the school district? A. Yes, sir; I suppose he is in the school district, and I suppose they can draw school money. I am given to understand they can draw school money for all the Indian children and half-breeds; that being the case, they can support a district school. But those children, of course, do not attend school.

MR. TULLY: Those are all the facts that you know? A. That is all that I know.

Q. "Neglect of public roads and trails within the grant?" A. I know

that the Eagle Point trail has been very seriously neglected. To such an extent has it been neglected within the last two years that the mountain men who come over it—Mr. Murphy, who lives at Lake Tenaya, that is his only means of ingress to Yosemite Valley and egress from it with animals—he complains very bitterly about its condition. I know that I counted—I have the number some place—I think it was one hundred and forty-seven cross pieces of wood and stone and logs, varying all the way from three inches to eight inches in diameter, crossing the trail at the corners. Those are used as water-ways, to turn the water. Those were first placed there by Dennison. Formerly that trail was ditched, the same as you would ditch a road; but that, I suppose, was found to be too much trouble, involved too much expense, and these logs were put in. Those logs have been left at each of those different turns. Now, the descent in the Eagle Point trail in places must be four feet in ten—very steep. You come down a zigzag and turn short the other way, right at the corner, the same as the turning or winding of a staircase. Right in the corner you find this log sunk down; on this side is a ditch worn by the water. A horse comes down and steps down on that log and bears his whole weight, and you find that it drops them all the way from eight inches to fourteen inches in places. I have measured some that were between thirteen and fourteen inches; a drop right at the corner at this place. If a horse in stepping down over one of those logs happens to stub his toe and bends his knee, he goes down, and if he goes down he goes over, and if there is a woman on his back she goes where she never gets up again in this world, because he rolls over. In places on that trail you will find places as steep as at an angle of 45 degrees, and you will roll over, and at the next zigzag of the trail keep rolling until you find a lodgment. A woman is fastened to the saddle by her clothes and by a miserable foot stirrup; she never could free herself; it would simply tear them all to pieces. I know that I am afraid to ride my own horse over that trail almost; in fact, I walk down the trail in preference to riding.

Q. Have any accidents ever happened that you know of? A. No; fortunately there has not. That trail is very little used by tourists.

Q. You consider it a very dangerous trail? A. I consider it a very dangerous trail. I consider it in a very lamentable want of repair.

Q. That has reference to that trail? A. That has reference to that trail. I was up on the Glacier Point trail some time in October, when I was at work frescoing the chapel at Yosemite. I walked up to a point of view of mine, up nine zigzags of the trail, and I found that trail, in my idea, in very bad condition. It had been all churned out, and the dust in the trail must have been eight or nine inches deep—granite sand and dust. It raised a suffocating cloud around you every time you stepped, and for every foot you would gain you would go back six inches; slip back. I have not been over that trail from base to summit in five years; in fact, this is the first time I have been on the trail in four years, since McCauley quit taking care of it, and I never saw that trail in the condition it was last fall. Mr. McCord testified that it was in good condition; he has only known that trail for a year; he don't know what its condition was four years ago. Mr. McCauley told me it was in the most wretched and deplorable condition that he ever saw the trail in his life; he has complained bitterly about it.

Q. Who is McCauley? A. The man who formerly owned the trail, and who keeps the Glacier Point hotel, at the summit. He built the trail and sold it to the State. There was built in the Yosemite, during the winter of 1886 and spring of 1887, a road that we call the Causeway. That was known in the valley that spring as the death trap. That road crossed from the Barnard bridge across the valley to near Hutchings' place. It is a little

short belt that cuts across about a quarter of a mile. That road answers in Yosemite Valley the same purpose that Market Street answers in San Francisco. All the heavy travel in the valley has to pass over that road, to get to Mirror Lake; all the campers' travel. At that time all the stage travel and all the wagon travel from the lower valley and from Barnard's hotel had to go over that to go to or come from Mirror Lake; at any rate that was the chosen road. That causeway was built, and I measured it in six or seven different places, and it averaged fifteen feet and five inches in width. It was intended to be sixteen feet wide. Well, it was raised from the ground on either side probably four feet in the highest place. Now, it is impossible for any two wagons to pass each other in safety on a road of that width. When the Commissioners were there in June they were filling in the upper end of that same road, and Mr. Chapman's wife, with a team, got mired in the stuff they were putting in that road, and it was with great difficulty that her team and horses were pulled out by the workmen. The night before there was a four or six-horse team got stalled in the same place, and they had to take them out and leave that team in the place all the night. They were packing in mud to fill up that place. I think that was one of the reasons that made the Commissioners dissatisfied with Dennison's management. They saw with their own eyes what was going on at that time. After Mr. Dennison retired from the guardianship, Mr. McCord, who succeeded him, took that road in hand. The road runs north and south. The east wall had to be removed. The road was widened out an additional eight feet or more, I think. It was almost the same as making the State build an additional road. The road now is passably wide; not any too wide. In the condition it is in now, if people walking along that road meet a band of Coffman & Kenney's horses being driven to pasture in the afternoon, with whooping and hallooing, whoever is on that causeway has got to get down in the ditch or be trampled upon; one or the two.

Q. Is that the only road? A. That is the only road across that place. On either side are barbed wire fences.

Q. I understand the outer wall or edges of this causeway are perpendicular? A. Perpendicular; no slope. It is a dead drop-off; just the same as a drop-off of this table. I have among my photographs somewhere a photograph of that road.

Q. Well, describe it to us as well as you can. A. I have described it the best I can, already. You could see for yourself in an instant if I could get hold of the photograph. I have got so many hundreds of them that I cannot keep track of them all.

Q. I don't know that it would add anything to the knowledge of the committee. A. There was one among those photographs that I very much desired to show you, showing a portion of the road that was neglected this fall. There was a lot of holes in a piece of causeway; little pieces, in the shape of culverts. The rock and stone dropped out from that place and left a hole about a yard square; and, coming along that road in the night, a very dark night, anybody's horse would go right in it. That piece of road stood in that condition, I should think for three weeks or more, in the valley.

Q. Was that during the busy season in the year? A. Yes, sir. That was in September last. Now the condition of the bridge ends or abutments is a thing that, in my judgment, calls for remedy. The abutments rise up and they are sheer walls, and of course at the near bridge ends they are the same width as the bridge. Nearly all the bridge abutments are from eight to fourteen feet. There is only one bridge in the valley—only

one end to the abutment of that bridge, that is walled. That was at the northern end of the Barnard bridge. That is walled up about eighteen inches. If any of Coffman & Kenney's horses happens to be feeding or browsing on the brushes below, and a man drives a spirited team along, and that horse lifts up its head, and jumps out, any horse is liable to jump off and throw the inmates of the carriage out and kill them. There is nothing to protect them, not in any bridge in the valley. In July of last year, one of the members of the Dewing firm went down to the Cascades. He chose to drive his own team; went very late in the night; went against the advice of all good judging people in the valley; didn't get home until between one and two in the morning. In fact, it got so dark he was obliged to get out of his team and light matches, and they followed him with the team, the ladies that he had. He pursued that course until his matches gave out; and near the Pohono bridge, where his horses took the road and drove themselves on to the bridge, in the morning his wheel tracks were found within three inches of the edge of the abutment, and if the team would have tipped off, they would have all gone down some fourteen or fifteen feet; that would have smashed them all up there. On the new trail going to Snow's—it was testified to by Mr. Jackson that that trail was nearly wide enough for a wagon road all the way—you go up hill towards the south from the valley. The trail is, to all intents and purposes, safe in most places. You immediately turn a sharp point, and you find the trail has been blasted out of the solid rock, and it is above the river bed at that place from fifty to seventy feet. It is a solid wall down. Nothing is left, but occasionally there is a bit of debris, talus, that has fallen down from the side, but mostly it is the blasting that has been thrown from the sides. That trail is, as near as I recollect, between four and five feet wide only. Here you have the solid wall; no railing, nothing on this side, and a solid drop-off down below. Now, if a rock starts to slide from above, or any noise frightens a horse and he makes a jump or plunge, they are sure to go off: sure to go right into the Merced River. There is nothing to protect people at all going up that place; and that piece of trail at that point must be, where it is dangerous, at least from one hundred and fifty to two hundred feet long. You follow around and turn this way and go around one zigzag and go up a considerable distance where it is absolutely dangerous for a person to travel over that trail. It needs an iron railing, a gas-pipe railing, at that place, to make that spot safe for a horse to go. Men on horseback are perfectly helpless in cases of that kind. I went down myself eighty feet; that is, down a slope; a horse of mine went down eighty feet, on the outskirts of the Yosemite Valley, in 1884. I went down fourteen feet myself, and I now know that it don't make any difference how rapid a person may be in getting on or off a horse, when a horse falls, you fall too. In regard to the dust in the road, during the years 1886 and 1887, 1887 particularly, that portion of the road which is traveled by the stages of the Oak Flat line, coming down from El Capitan, crossing the lower iron bridge, there was a piece of road in there that the ruts were worn out so deep and the dust was so deep, that myself and Mr. Sinning, in a two-wheeled cart the axle dragged on the top of the road, in the dust in the road. The large wheels dragged in the dust, and I had to get out in dust eighteen or twenty inches deep, solid flour dust, and lead the horse out. Mr. Hutchings and myself went down upon the same piece of road a day or two after this occurrence—this was in the rut where we found it so deep; and I asked Mr. Hutchings to sit in the cart and hold the horse; and I got out and with a little bit of a round box I collected some of the dust out of that road and measured the depth. Mr. Hutchings looked on and said,

"Are you crazy?" I told him yes. He asked me what I was doing. Says I, "I want you to be a witness that I am measuring the depth of the dust in this road and collecting samples." It measured from eight and one half to ten and one half and eleven inches deep, with a foot rule. You could run a foot rule down before you struck the bed of the road. We crossed the bridge and went over a road used by the Yosemite Stage and Turnpike Company. We found there dust varying from six and one half to eight and one half inches deep. That dust is so fine that you can't take the top off of one of those boxes without seeing a cloud rise. They requested me to shut them up in the Senate committee.

Q. That road is in the valley? A. Yes, sir; that is a portion of the regular drive around the valley, and some cross-roads.

Q. What distance of road is there, more or less? A. The road is more or less in dust varying from three and one half to eight inches deep all around the valley in the summer time.

Q. That is in the summer time? A. Yes, sir. I know last summer, when Coffman & Kenney's saddle train horses would be driven up the road to the hotels in the morning, a black cloud of dust would float over the northern end of the valley, and you could see it for an hour after the passage of those horses. just the same as the dust that comes from a slide; and when the stages went by Barnard's hotel the same dust was blowing in the same way, all the time; the air filled with it; you couldn't breathe anything but dust. The passage of the saddle train horses, though, would kick up the biggest dust, and that makes that portion of the valley, wherever they travel, makes it awful in the summer.

Q. Have there ever been any efforts to sprinkle the road? A. No; no efforts were made. During this year, when all this hauling of heavy timber for the new hotel was going on, no efforts were made to put the roads in the valley bed, over which those teams passed, in order; and it got so that along at the latter end of the season—September and October—those roads were virtually impassable. Wherever pedestrians go in the valley they have to walk through these roads; there are no foot paths for them whatever.

Q. They either take the woods or those dusty roads? A. Well, take to the rocks or take to those roads. I would like to make a statement in regard to the bed of the valley. The question has been asked in the Senate committee by Mr. Mills and others of various parties as to what the acreage of the valley was. Now, that is a question that scarcely anybody can answer. It was with a view of showing that the number of acres that are under fence are comparatively small to the number of acres that the valley contains. The talus of the Yosemite Valley comes down in places at an angle of forty-five degrees and nearly one third of the way across the valley, especially on the south side. There is then a little portion of meadow land. On the outside of this flat portion of meadow land this belt road is built; but the whole entire valley almost, with but very little exception—all that valley that is flat, that is worth anything at all, is fenced in. You can make your entire drive around the valley and never lose sight of fences.

MR. TULLOCH: Are there any openings or gates in those fences? A. Very few.

Q. Those gates that are there, have they locks to them or can they be opened? A. No; they have no locks on them now. Mr. McCord has removed them. The only locks that were placed upon gates were in the State pasture that I spoke of, but there was formerly a very beautiful road that led up through the center of the valley. That road—the bridges were removed from the road, and the road was abandoned, I think, during Mr. Hutchings' time. That road is fenced across, as I stated, within two

miles in nine different places. That was one of the most beautiful drives in Yosemite Valley.

Q. Was that the drive where the road went on the north side of the river?

A. Yes, sir; that went up Mirror Lake. That road is completely fenced up; completely abandoned; that is, completely abandoned.

Q. Is there any road on that side of the valley at all? A. Yes, sir; to the north. Suppose that there was no river flowing through Yosemite Valley; there is no possible way that you can cross that valley on horseback except where these few cross-roads go across.

Q. To what use is the river portion of the valley, between the road that runs north of it and the river, to what purpose is that put? A. Pasturage, farming land, fenced in for the use of private individuals.

Q. How far up do those fences run in the direction of Mirror Lake? A. They run up as far as Harris' place; they run up a mile or a little over a mile, and then above that again the orchard is fenced in. The whole floor of the valley is taken in by fences. The truth of that statement can be easily ascertained.

MR. TULLY: Is that all there is on the subject of roads? A. Yes, sir; inasmuch as I cannot lay my hand on the photograph.

Q. We can go on to something else, and if you find it you can submit it. "Employment of State labor upon work for private parties?" A. My studio was fitted up by State labor for Mr. Dennison's use. He was Postmaster as well as Guardian of the valley.

Q. Any other instance? A. State labor was employed in front of Cook's hotel, the Stoneman House, in graveling and smoothing off the ground; making it free from dust. State labor was employed in grubbing the trees on his ground and preserves; that which is under lease to him, which I understand, but don't know, which I understand, according to the terms of the lease, he was to do himself. I don't know as to that.

Q. It was not on private lands; the building and the lands upon which that work was done belonged to the State? A. They belonged to the State, but they are under lease to him. That is all.

Q. This is the last question, and it is a very broad one: "Failure of the Board to properly manage the Yosemite Valley in accordance with the conditions imposed upon the State by the United States?" A. Well, let me read a little. This is from a report of Ham. Hall: "The use of the valley itself, by the constant travel and the grazing of animals upon it, is beginning to tell upon the character and extent of its vegetable productions. The finer forage grasses are being thinned out; the coarser and more robust or hardy grasses and weeds, able to withstand the trampling and cropping, are taking their places; and the area of meadow is decreasing, while young thickets of forest or shrub growth are springing up instead. Members of your Board have observed this change. It is very marked, and it may be regarded as in a degree alarming, sufficiently so, at least, to prompt measures calculated to check it. The cause is alleged to be the abolition of the old practice of burning off the thickets, which practice formerly made new clearings almost every year for grass growth. Doubtless this clearing had its effect in this way, but another cause, and perhaps a more potent one, is to be found in the continued cropping of the grass and trampling of the ground by horses." [Reading from report of the Commissioners to Manage the Yosemite Valley and the Mariposa Big Tree Grove, for the years 1885-86, page 16.]

Q. These are taken from Mr. Hall's report? A. Yes, sir.

Q. After personal inspection of the valley? A. Yes, sir. After personal inspection he was requested to report. He says: "No attempt should be

made to improve the Yosemite Valley, in the sense we use the word speaking of a park. In this gem of topographical carving, with its sparkling setting of snow-clad peaks, polished granite knobs, and verdure-covered ridges, the Creator has provided a magnificent jewel; one transcendently attractive simply for the reason that it represents the grand and beautiful in nature, because it so far dwarfs all which man can accomplish, all else which the individuals of mankind generally can hope to look upon.

"Seriously to speak of its improvements would be presumptuous; but, if it is to be occupied and enjoyed, there arises a duty because it becomes a necessity, to preserve this property from defacement; for the influence of man's presence in such regions is destructive of their charms, and productive of effects which pain rather than please the beholder.

"Hence, I presume the object of your desires is to preserve and promote the enjoyment, on the part of the public, of this noble trust property; and with the view of assisting or sustaining you in such endeavors, I write this communication. And whenever the words "improve" or "improvement" are used herein, they are to hold as applying to works necessary for the preservation or promotion of the use of the valley—works, in themselves, that are by no means *improvements* to the valley, but *necessary evils*, which *occupation* and *use* bring in their train or force in their advance."

I find here, from the personal report of Mr. Chapman, on the work that he did in the Yosemite Valley this year, the following criticisms; he speaks of the danger of the trees and vegetation being consumed by fire in the dry season. He says: "In only one way can this rapidly increasing danger be removed. The work of meadow reclamation should be vigorously continued. The fern lands should be relieved of the dense covering of young pines, and the unsightly undergrowth in all places sufficiently removed to enable the districting of the valley floor by means of more foot paths and avenues to exercise fully its naturally preventive influence in arresting at once an incipient fire. The work of seeding the valley from wall to wall to useful grasses will materially aid the suppression of undergrowth, and at the same time restore the landscape to its original and well remembered beauty, but this can never be accomplished whilst the custom of running stock at large is permitted. To this alone is due the killing of grasses, and the lamentable signs of negligence that have followed. There is no longer any excuse for allowing tenants to run stock outside of the ample inclosures set aside for their use."

I read from a criticism on the report of Fred. Law Olmstead in regard to the reclamation of Niagara Falls.

Q. He was a landscape gardener? A. Yes, sir; he is considered the most eminent authority at the present time in America on this subject. On page 631 of the "Century" for August, 1887, I find that I have marked a few lines. I find that the State of New York has appropriated \$1,000,000 for the use of the Board of Commissioners to manage and to improve Niagara Falls. It states here that "Entrance fees have already been abolished, and many eyesores and incumbrances in the shape of mills and fences and vulgar places of amusement have already been removed. But it will be easily understood that a great deal of further work—and of a constructive as well as of a destructive character—will be required if the reservation is to show that its owners appreciate its value and the responsibility which its possession lays upon them." I find this on page 632: "And they will be shown it as nearly as possible as nature made it, neither desecrated nor, in the cant sense, 'improved,' and under the beams of the sun and moon, but never again of colored calcium lights. Its beauty and its wonderfulness are to be given the freest chance to speak to our emotions,

while the petty and discordant tones of humanity's creations are as much as possible to be suppressed." [Reading from the August, 1887, number of the "Century Magazine," page 632.] Then I find here, John Thorpe, another authority on landscape gardening. On page 637 of the same magazine he writes to the editor of the "Century," "Allow me to thank you for your 'Landscape Gardeners Needed for America,' in your 'Topics of the Time' for June.

"The so called landscape gardener is in many cases not as intelligent as an ordinary every day laborer; his object seems to be to have as many narrow and contorted walks as possible where they are not needed, to plant many trees and shrubs in the most inappropriate places, to make ridiculously-shaped beds, and to plant them with but one object—to use as many plants as possible without regard to suitability. It is surely worth the attention not only of those engaged in the business, but of gentlemen who have country houses, to consider at least the fundamental features of landscape work and landscape art. There can be no stereotyped plans for the embellishment of grounds; each domain calls for different treatment and different groupings.

"The natural surroundings should be the first consideration, instead of being, as now, often ignored. Unfortunately, we have but few good works which treat this important subject in a right manner; but, in spite of all this malpractice and ignorance, it is evident that we are progressing, though slowly."

I read these quotations to you to justify the accusation of neglect to carry out the provisions of the Government.

Q. The Government expected that something would be done there in the line there suggested? A. Yes, sir.

Q. And that there has been nothing of the kind? A. Nothing. I claim that at the present time the bed of Yosemite has not the first shadow or substance of resemblance to anything like a public park.

Q. There are no walks, no alleyways, no beautiful turnings and windings through the shrubbery and trees, that ought to constitute, in your judgment, the prominent features of the park? A. Yes, sir. There is simply a belt road around the bed of that valley.

Q. Over which horses may exercise themselves hauling passengers around? A. Yes, sir. There are certain cross-roads that cross from one side to the other of the valley and strike that belt road at different places. The whole interval is used as pasture ground, or as hay meadows. There is no road running through the center of the valley. You cannot choose your location. The trees that are cut out in that valley, simply prove the truth and wisdom of Fred. Law Olmstead's report, that no natural object should be defaced where it can be let alone.

MR. KELLY: Didn't there used to be a road in the center of the valley? A. Yes, sir. That has been abandoned. The State has paid out a good deal of money at times on that. It is abandoned and fenced up entirely.

MR. TULLY: Do you not think that to the eye of the tourist or the visitor there—a person who is accustomed to visiting large parks, parks that are properly cared for as compared with this—does it not strike you that the object has been to afford accommodations, roads, and trails, and one thing and another, where saddle trains and saddle horses and hired teams may conduct the passengers around there, rather than to the enhancement of their convenience by these little by-ways, alley-ways? A. Yes, sir; most decidedly so.

Q. The work that has been done there apparently seems to have been directed to facilitate, as much as possible, the drives in the direction and

over the places where horses and vehicles would have to be hired to take them? A. It always looked to me as though every inducement were used to make people spend money in the Yosemite.

Q. Give employment to the teams? A. Yes, sir; to make people spend more money with the livery teams—with the livery men. As a usual consequence, people, in the first place, ride eighty miles before they get to Yosemite—a hard jaunt. They get in there cross and all tired out and used up. The next day they are whooped up to Glacier Point or Vernal Falls. They take a ride that day that under no circumstances in the ordinary run of their lives could you get them to take any way; under no conditions would they take it. They go there as in duty bound. The next day they go perhaps to Glacier Point, another terrible ride. By that time there is nothing left of them. Getting through, they say: "Well, it is a beautiful place, and all that, but for God's sake let us get out; we want to get home." They get on the stage, and, until they get to the railroad, they are almost dead. The railroad ride begins to invigorate them, and they begin to think what they have seen. If there were pleasant footpaths. I have had, probably, in the last four years, four hundred English people in my studio, and the general remark is this: "How far do we have to go, Mr. Robinson, before we can see natural California? How far do we have to go before we can get rid of this farming and this fencing, and this tree cutting and trimming up? We don't come here to see this. We supposed we were going to see things in their natural light. It is so represented to us abroad. How far will we have to go?" I tell them: "You will have to go at least a day's journey in the mountains, and there you will find evidences of sheep and their smell everywhere. This same Mr. Davies, that the Governor referred to, told me, in Leidig's hotel—he says: "Mr. Robinson, this is very peculiar to me, this fencing in of this property; it looks awfully. I never saw anything like it in my life."

Q. More like a farm than a park? A. Yes, sir; he told me, "It looks more like a small Scotch farm than a park." He was there late in the fall, and it was cold; and it did resemble Scottish climate considerably. Another Englishman, a Mr. P. H. Bryant, one of the best known monopolists in England, having a monopoly of matches all over England—he is worth millions upon millions—he said, in a very laughing way, "Mr. Robinson, they are determined to make an English tea-garden out of this place." That is, similar, in England, on a more extended scale, to the Vienna Garden, or some Dutch beer-garden in San Francisco, where a few trees are stuck in the ground. Mr. Mills made the remark to me last spring at the close of the June meeting, as I said awhile ago: "Oh, Mr. Robinson, they are determined to turn this thing into a cow pasture, and I might just as well vote with them, because they are determined to do it."

MR. KELLY: Have you heard Mr. Mills' testimony about leasing the Stoneman House, before this committee? Were you present? A. I don't remember that I was; I might have been; but it has entirely escaped my memory.

Q. Did you hear Judge Grant's? A. Yes, sir.

Q. You heard Judge Grant say that the reason they rejected his bid was that he made a condition that stages should stop at the Stoneman House? A. Yes, sir.

Q. That the Commissioners said that it was impossible for them to grant that condition; that they had no control over the stages? A. Yes, sir.

MR. KELLY: I find in Rules and Regulations, Rule 20: "Stages entering the valley shall stop at each hotel in the order of location, that passengers can exercise the right of location."

THE WITNESS: Yes, I know that that has been warded off in this way: they have put that in their rules and regulations, but they say that they have no right after all to enforce it. Mr. Washburn, as I said the other night, has always denied their right to control his stages within the valley limits. As I understand, he remarked to them once that they might run the valley as much as they pleased, but they couldn't run his stages. I look at the whole matter simply in this light: that the Yosemite Valley is the greatest attraction that California has got. I think that it is indirectly the means perhaps of people from all over the world dropping two or three millions a year into the coffers of the State. When you mention California to people from abroad, the first thing that occurs to them is tremendous snow-clad mountains, big trees, awful gorges, high waterfalls. They come to this country with the idea that they may see some of those things along the road, or that they will get to see Yosemite some time or other. Even though they don't get there, they may drop their money in Los Angeles, and San Francisco, and San Diego; put it into various things. That is one of the great incentives that brings them to this country. It seems to me that the State of California ought to do everything in its power to promote the pleasure of those people when they visit this greatest attraction we have; probably the greatest attraction that is open to the public world at this present time. It seems to me that anything that tourists complain of should be removed. It doesn't make any difference whether it is a few or a great number. I find that in the laws of the State the Board of Yosemite Commissioners are regarded—so stated—that they are mere agents of the State. It is not their duty, it seems to me, to interpret the laws to suit themselves, but to execute them simply as they find them. I don't see that they have done thus and so. It seems to me that they have interpreted the laws to suit themselves. But this thing would only resolve itself into a question of error of judgment. If those gentlemen have made errors of judgment of that kind, their places ought to be filled, because a few Commissions making errors of judgment, especially where those errors of judgment affect the trees, it would not take a long time for a few errors to destroy the trees.

Q. Do you remember telling me something about a conversation with some railroad man, in which he warned another person not to interfere with Cook, because they were interested in Cook? A. No; I don't know what you refer to.

Q. Some railroad man, I think. Towne or Goodman told somebody who was complaining about the monopoly. A. Are you sure I made that statement?

MR. KELLY: You told me something about it. A. It is all mixed up in my mind. I forgot to state one thing in regard to tree cutting. That when the contractors for the Stoneman House were cutting timber near or upon the grant, Galen Clark warned them that they had got marked the tree which marks the northwestern boundary of the grant. That was marked to fell. He warned them that that tree marked that boundary. Also warned Mr. Dennison that such was the case. Mr. Dennison warned them not to cut that tree, but it was felled. Mr. Clark, afterward, piled up a monument on the stump of that tree, to mark the survey of the grant.

J. M. HUTCHINGS.

Recalled.

THE WITNESS: There is a great oversight in considering the amusements and the comforts—I mean so far as the passage from here to there is concerned. Now, there was the Cosmopolitan, where people could go and have a game of billiards, or they could have a game of pins. It is true, one room was sometimes used for gambling, but that ought to be made a cause for the surrender of the lease, or the canceling of the lease; and they could go and they could have a glass of lemonade, and it was a regular rendezvous for people after they had been sight-seeing; and people do not want, all the time, to be upon the mountain tops and in the clouds. They want to come down to relaxations, and there are none of those provided. They abolished the Cosmopolitan saloon, and, as Mr. Priest testified, it was one of the worst things they could have done; and one queer sort of an arrangement was that when it had been decided to abolish it, one of the gentlemen composing the committee wanted one bath-room left, because when he went to the valley he wanted to take a bath, as though nobody else ever wanted to take a bath besides that one Commissioner; and everything has been to the neglect of the comforts, and so forth, of life. I meant to testify, the other night, that Switzerland derived two thirds of its support and all its expenses from the tourist travel that passed to witness its wonderful mountains; and that Bavaria, being left entirely out of the beaten track of tourist travel, first provided and prepared a beautiful garden; after that, erected buildings, and then after that, invited eminent artists of all nations to contribute to a picture gallery, or to send in pictures; and the result is now that three fourths of the revenue required by the State is derived from the tourists that now pass through Bavaria, mainly at Munich, to witness the pictures and the gardens, and so forth, that have been provided at the expense of millions of dollars.

[Further hearing continued until to-morrow evening, February 20, 1889.]

WEDNESDAY EVENING, February 20, 1889.

Present—Mr. Rundlell, Chairman, Messrs. Tully, Gardner, and Tulloch.

G. G. GOUCHER.

Being sworn by the Chairman, testified as follows:

MR. TULLY: I understand that Senator Goucher is not our witness; that is, we have not subpoenaed him; he is not here by citation from the committee. He is simply before us to make a statement, I understand, in the nature of a rebuttal, perhaps. You are aware of the nature of the charges? Answer—Yes, sir. In order to give the testimony I have to give in proper order, I would prefer you would read those questions in the same order, because it will bring to my mind the matters that I want to speak of.

Q. You are one of the Commissioners of the Yosemite Valley, are you not? A. Yes, sir. I desire to state to the committee that I was appointed by Governor Bartlett in February, 1887, to fill out the unexpired term of Commodore Raymond, deceased. That term expired on April 13, 1888, and, at that time, I was reappointed by the present Governor. I have attended, since I have been a Commissioner, two regular annual meetings;

that is to say, the meeting of 1887, in June, a few months after my appointment: also the June meeting of the Commissioners in 1888, and one special meeting of the executive committee, but to which all the members of the Commission were invited, that was held in San Francisco in August, 1887, at which time the Stoneman House was leased. I merely mention that to show to what extent I have been connected with the Commission.

Q. Have you ever acted in the capacity of one of the members of the executive committee? A. I acted as a member of the executive committee—at least, I was elected a member of the executive committee in June, 1887, and served in that capacity until June, 1888, nominally, but the notices were always sent to me when they held a meeting—I lived in Fresno, and it generally happened that I was in some case, and therefore, I did not attend, I believe, but one meeting of the executive committee during the year.

Q. Are you pretty well acquainted with the transactions of that executive committee? A. Well, fairly well acquainted with them. Yes, sir; during that time.

Q. Since you have been connected with the Board? A. Yes, sir.

Q. The first charge here is the charge of misapplying public moneys and appropriations. Now, you may state to the committee what you know about that charge? A. Well, sir; there has been no misapplication, as I understand that term, of public moneys or appropriations, since I have been a member. Prior to that time, of course, I am not well informed; misappropriation or misapplication might mean, as a matter of judgment, that the funds were applied with bad judgment. Do you construe it that way?

Q. Well, it is susceptible of that meaning, certainly? A. Of course, in that view of the case, I would simply be passing upon a judgment in which I had previously participated, believing it to be good. I do not say that I am a competent judge, but as to any wrongful appropriation, or application of moneys, there has been none, and I think—

Q. This does not state that it is a wrongful appropriation of money, and I understand it simply has reference to what has been done there in the way of disbursing moneys, and the inference to be drawn was that the money was badly spent; that it was not judiciously invested? A. Well, yes; I know that money has been injudiciously expended in the valley at different times, and during Mr. Dennison's tenure there as Guardian, particularly. The management of Yosemite Valley I consider to be bad, so far as his position as Guardian was concerned. I believe that he exceeded the authority conferred upon him by the Commissioners, in many instances, and so expressed myself, as an editor of a newspaper at that time, and I adhere to the opinion still. If you want any particulars I will give you some.

Q. Well, state, if you please? A. Well, for instance, he was directed by the Commissioners, or the executive committee—I won't say which—to build a road from near Barnard's hotel across the valley towards the wall on the north side of the valley, and of course that road had to be built at that point through what was a morass or swampy meadow, miry ground. He built it up of rock about three or four feet high in many places: it was at great expense, of course. The rock had to be hauled there, and in many places, it was not possible for two teams to pass. There was no guard on either side to protect persons who were riding horseback and who would happen to meet a wagon; there was nothing to protect the horses from shying off. It was a dangerous thing; it showed bad judgment, and I considered it a misapplication of public funds, but it was a matter of bad judgment

on his part alone, so far as I know. I know that the Commissioners subsequently had to cause that to be widened in order to make it available. That is one instance. As to this matter which Mr. Robinson alluded to, the fact of the building where he had his studio, near the old Cosmopolitan building, and its being torn down by Mr. Dennison when Guardian, and being moved some distance, and being furnished as a Post Office at an expense of \$400, I am satisfied that no such sum was used. I was not a member of the Commission then, and as to the particulars, the details of that I do not know anything. Of course, I know from Mr. Robinson's complaints to me at different times since that act was done; he considered it an outrage, and the way I understood it from all inquiry, was this: that Mr. Robinson really had no lease of this building at all; that Dennison received instructions from the executive committee to remove it and to put up another building for use as a Post Office.

Q. And this building was appropriated for that purpose, I understand?
A. Yes, sir.

Q. Mr. Robinson's building? A. Yes, sir. I think Mr. Robinson had no more right—that is, as a matter of right, he had no more right to it than any of you gentlemen would have. It was simply optional with the Commissioners to let him have it or not, and they did not choose to do it.

Q. Did they build that building for him for his accommodation? A. No.

Q. Do you know who built it? A. Mr. Washburn built it.

Q. The building that Robinson was occupying formerly as a studio? A. The building that he was occupying as a studio, and which he mentioned last night as being the one from which Dennison removed him. That building was originally built by Henry Washburn, of the Yosemite Stage and Turnpike Company.

Q. Subsequently leased to Robinson? A. Robinson was subsequently allowed by the Commission to use it.

Q. Did not he pay rent for it? A. Yes, sir; I think he did.

Q. Do you know how much he paid? A. No, I do not know. I was not on the Commission then.

Q. That building was subsequently removed and dedicated to Post Office use? A. Yes, sir. It was used as a Post Office building, the materials of it. It was not reconstructed exactly on the plan.

Q. You do not know what the cost of the Post Office building was? A. No, sir; but it could not have been anywhere near \$400. I think the books will show that it was not anything near that.

Q. You have no knowledge of your own? You do not know what it did cost? A. No, sir.

Q. How long did that road which you speak of there, built by Dennison, remain in that condition before it was repaired? A. It remained in that condition until the June meeting, 1887. That was the first meeting I attended as a member of the Commission; it had been constructed between the June meeting, 1886, and the June meeting, 1887, by Dennison. As soon as the Commissioners saw it and examined it, they unanimously condemned it as an exhibition of folly, and ordered it widened at once.

Q. Do you know what its present condition is? A. The present condition is good; it is wide enough.

Q. Is there any protection on the sides of it? A. No, sir.

Q. To prevent wagons, or horses, or anybody from going over? A. No; but as it was widened the oval was continued, so there is not the same pitch now.

Q. There is no pitch now? A. Not much; very slight; the danger in that way is removed.

Q. Mr. Robinson spoke something about the condition of the abutments or the approaches to the bridge being very precipitous at one place; there is one place where a wagon came very near falling off twelve or fourteen feet? A. I did not hear that part of his testimony. What bridge did that relate to?

Q. I think it was the same bridge you speak of, built by Dennison, that was subsequently widened? A. Well; and that road from the bridge through northward I considered a poor piece of work, but there is nothing there at present that is dangerous in any way.

Q. Then you think Dennison's expenditure of money there was a very injudicious expenditure of money? A. I think that the expenditure was injudicious, because when he got through with it the work was not completed, but had to be re-done, as you may say.

Q. Are those the only instances in which you know of anything that would tend, in your mind, to point towards a misapplication or appropriation of public moneys? A. That is the only one. There has been no misapplication, so far as my knowledge goes. It seems to be a matter of judgment. I have approved—at least, as a Commissioner, I have approved all the other expenditures, since I became a member.

MR. TRUMAN: I would like to ask my colleague one question: Did not the Commission, after becoming dissatisfied with Mr. Dennison, remove him? A. Yes, sir.

MR. TULLY: Do you know about what time he was removed? A. Yes, sir. The Commissioners did not remove him, in the strict sense of the term. I will explain that. There were some of the Commissioners who wanted to remove Dennison in June, 1887. That was the first meeting I attended. I will state that I had been making a fight against Dennison's continuance there as Guardian for two years before. I was not a member of the Commission, but I disapproved of his management there, and was endeavoring to have him removed. Of course, as soon as I became a Commissioner, I, with others, undertook to carry that out at the June meeting, 1887, and we failed, after balloting a number of times. Mr. Hutchings was a candidate, and other parties who were friends of mine, and Mr. Dennison; but the reason assigned by those who finally came together, who had been supporting other parties, who came together and constituted a majority, and in that way kept Dennison in. The reason given was this: that Dennison had been the Guardian while the construction of the Stoneman House had been in progress, and that it was still incomplete, and that he, being so familiar with all matters connected with the construction of the Stoneman House, that it would be to the advantage of the State to continue him in as Guardian, as the executive officer of the Commission, until the hotel was completed, and then the members of the Commission who were favoring Dennison, stated to me that they would be willing to remove him. When we met after the completion of the hotel, in August, I think, in San Francisco, Dennison resigned. I understood at the time that it was because he knew that the Commission would remove him.

Q. Do you know anything about that trail that was built called the Anderson trail? A. Yes, sir; I know something about it.

Q. Are you familiar with the circumstances surrounding the construction of that trail? A. No, sir.

Q. Was it done by order of the Commission? A. I can tell you all I know about the history of the trail. Of course I have been over the trail since. I knew George Anderson, the builder, very well. I knew him

from the time I went to Mariposa County to live, in 1875. The first I knew about this, Mr. George Anderson came to Mariposa, to my office—the District Attorney's office of that county—and laid a complaint before me substantially to this effect: that he had taken a contract to construct the trail you refer to for \$1,500; and he was to be permitted to draw supplies, food, and powder and tools and other supplies. He was to furnish the men with food, and also to furnish them with working implements and materials; that was to be charged up against the contract price; that he had expended the full sum of \$1,500 in that way, and the trail was still far from complete. He thereupon communicated the facts, showing the situation to the executive committee, of which Rev. M. C. Briggs was the chief party. He was the Secretary, and, of course, took the correspondence. To that statement he received a reply signed by M. C. Briggs; signed "M. C. Briggs, Secretary." It was a letter in which Mr. Briggs stated, after acknowledging receipt of the contents and expressing sorrow, acknowledging receipt of Anderson's letter and expressing sorrow at his failure to make it a profitable job under the contract, stated that the executive committee had concluded to continue the work anyhow, and to go on with the work, and that the men employed by him, Anderson, would be paid; that orders would be given to the Guardian to still continue furnishing the supplies as before; and then this sentence occurred: "Your compensation is left to the executive committee." and it was signed "M. C. Briggs, Secretary." Now, that letter George Anderson put in my hands with a copy of the contract, or perhaps the contract may have been in duplicate. In fact, he gave me a statement taken from his book of the number of days that he had worked on this trail.

Q. That is, after the lapse of the contract? A. No; I think altogether; two hundred and twenty-two days was the amount; and he claimed that that kind of work was worth \$5 a day. I agreed with him.

Q. Did he tell you whether or not he boarded himself during that time? A. Well, I think he got supplies from this store there, at the order of the Guardian.

Q. Was it not understood that those supplies were to be charged up against him? A. I do not know what the understanding was in that regard. I cannot say. Well, I agreed with Anderson that I would go before the Commission at the coming June meeting—that was in 1885, I think—at the June meeting, 1885, I would appear before the Commission and present his claim, and endeavor to get an allowance in his favor. Well, I did so. I presented and had filed as a part of the evidence, while I was making my statement to the Commissioners, as part of the proof, this contract; the original contract. I presented and had filed as a part of the case the statement of the number of days work performed by him, with the dates, and his claim, of course, at the rate of \$5 a day, for overseeing the work and doing it. And I presented and had filed at the same time, this letter from Dr. Briggs, to prove that he had done the work after he had expended \$1,500: the rest of the work had been done by the express direction of the Commission, and that therefore he was entitled to pay, inasmuch as that was plainly implied in the letter, or stated substantially, that he should be paid; that his compensation should be left to the executive committee. Those papers are the ones that Charley Anderson referred to when he testified before your committee. Those were the only papers put in my hands, and they were all filed when I presented the case. The Commission, after I presented this case, had a closed-door session, the one that has been testified about, and I was eventually, I think the next day, sent for: notified to be present; and they said they had rejected the claim; and Mr.

Briggs opened some book, which purported to be a minute book of the Commission or executive committee, and read from it a statement under some date prior to that date, in which it was said that George Anderson appeared before the Commission and waived all claim to compensation, and all claim against the Commission for this work. Of course that was a complete answer.

Q. If true? A. If true. Anderson denied that he had ever waived it; but before I could present it at another annual meeting of the Commission Anderson died. Of course, I did not have him then to prove anything about it, but, nevertheless, I appeared before the Commission—that was at the meeting in 1886—for the purpose of renewing this claim, and they would not hear anything in regard to it; said their books showed that he had waived all right and they would not hear any claim, and that ended the matter so far as I know. Those papers referred to, if they are in existence at all, and I presume they are, are among the archives of the Commission. I have not seen them since, at least.

Q. Did they state that Anderson gave any written waiver of his claim, or whether it was simply verbal? A. The minutes read by Dr. Briggs at that time indicated that he had appeared and made some verbal statement, and whatever this entry was, it was an entry made by the Commission or by its Secretary, not by him.

Q. Merely a statement from the Commissioners that Anderson had so appeared and waived? A. Yes, sir; I never thought that that was just. I condemned the action of the Commissioners for that. I think Anderson ought to have been paid. The Commission or its Secretary or its executive committee never should have ordered him to continue after he had apprised them of all the facts, and never should have said in that connection, that his compensation would be left to the executive committee, without assuming the responsibility afterwards, and paying it or making some provision, and I always condemned the Commission for that, but they met it by saying: "He took the contract to do it for \$1,500; he expended that sum of money, and then we allowed him to go on and work afterwards, but it was a voluntary act, and he appeared before us and waived all right to that. He simply found himself in a bad contract, spent all the money, and we allowed him to go ahead, and furnished money to pay his workmen and for supplies."

Q. I understand you that this letter that Dr. Briggs wrote authorizing him to go on with that work and that the Commission would see that he was paid, that his compensation would be fixed by the Commission, was after he had exhausted his \$1,500 contract? A. Yes, sir.

Q. And that letter refers to the work that he did and was induced to do after the contract had expired? A. Yes, sir.

Q. Do you or do you not know whether the Commission or committee ever paid anything for that work that was done? A. I know they never did. I know they never paid Anderson a cent afterwards, because I tried to get it before his death and after his death, and failed.

Q. Do you know of any person ever having received it for Anderson? A. No. I know that, because I got letters of administration for Charlie Anderson in the matter, in order to give somebody a legal standing to collect, and he has the letters yet; at least, the estate is not settled up.

Q. Do you know whether he did place somebody in legal standing to collect it in case he died, and if so, who was that person? A. Well, Charlie Anderson got those papers before I was elected to the Senate, I think, or afterward.

Q. Papers of administration? A. Yes, sir; he got it before; and I told

him if the Commission would not settle it after he got the letters of administration, that I would endeavor to get the Legislature to pay it. He made that statement before the Senate committee. I do not know whether he did before your committee or not; but I told him I would endeavor to have the Legislature pay him.

Q. Has there ever been any application to the Legislature? A. I do not think I introduced a bill last session, but I won't be sure. I introduced a general omnibus claims bill for Yosemite Valley, which did not pass. But I have forgotten whether Anderson's claim was involved or not.

Q. Within your knowledge, you cannot say the Legislature ever made any appropriation to pay that money? A. I know they did not make any appropriation to pay it. I understood you to ask if there had been any attempt made. I know that the Legislature never appropriated any money for that purpose, and that the Commission have never made any for that purpose.

Q. Have you any idea of ascertaining, or did you ever ascertain, anything like an approximate idea of what was the value of the work he claimed he had done after the contract expired? A. Yes; I think that I am mistaken about saying that the two hundred and twenty-two days was both before and after. I think that the two hundred and twenty-two days were all after, because I told him he could not collect anything.

Q. That was for work done afterwards? A. Yes, sir; I was mistaken. I will correct myself in that particular. Well, I inquired of him what his own services were reasonably worth, and he said \$5 a day. I inquired of Mr. Conway, who was also a witness here once before—a road builder—and he said he thought that was reasonable. I would have been able to prove before any Court or jury by road builders in that mountainous country, that the work of superintending the construction of such a road or trail was reasonably worth that amount.

Q. The amount that he claimed? A. Yes, sir.

Q. The question here is, "The destruction of private and public property in Yosemite Valley?" A. Well, I last night took down, while Mr. Robinson was testifying at that point, some pieces of property referred to by him, and I will mention them in the same order. The Anderson cabin was taken down. That was a cabin which was put up by George Anderson for convenience during the construction of this trail that we have been speaking about. The understanding was that that was there for temporary purposes, and it was not to remain there after the work stopped; and of course, when the work was stopped and after he died, there was nobody to take charge of it. The cabin was of no use to anybody, and it was taken down. An account was made up of the amount of lumber—it was carefully measured—with the understanding that whatever that was worth should be paid to the legal representative of George Anderson. The lumber itself was admitted to be the property of Anderson, or of his estate. But that was not a destruction of any private property. On the other hand, it was by virtue of an understanding that it was torn down.

Q. Do you know whether he was ever paid for the value of that lumber? A. I cannot say. He certainly was not paid before his death. His representative, if paid afterwards, must have been Charles Anderson. I should take his word on that subject. I think he testified before the committee that he had not been paid anything. But before I heard that testimony, I was under the impression that he had been paid for that lumber, or that he had sold it.

Q. I think he testified to the fact of having received some little money. I do not know what shape it was.

MR. GARDNER: I think never a cent. A. As I explained before, that was torn down, and if anybody received it, it was his representative, Mr. Charlie Anderson. The fact of the business was, the Anderson brothers were not on very good terms. George Anderson and Charlie Anderson had lived within a few miles of each other, but had not met each other for fifteen or twenty years, and Charlie Anderson knew nothing about his business until after his death, and the first he knew I sent him a letter that I had a claim in my hands, and would like for somebody to be the principal in the matter; and he came then to Mariposa to see me about it. That was the first interest he took.

Q. That was the first item on Robinson's account? A. Yes. The next was Lembert's cabin. Lembert's cabin was a hut; it was of no value at all. I do not think Lembert ever claimed that he had any right; he was there by sufferance, and it was a disgraceful structure anyway; of no value. There are Indian cabins in the valley, Indian huts, of a great deal more value. It is not worth mentioning. The Fagenstein cabin is something I know nothing about. Whatever was done, was done by Mr. Dennison. That was before my incumbency as a member of the Commission. The Folsom property he claims was torn down. That I recommended to be torn down myself, because I was a member of the building committee; at the June meeting last year I recommended it to be torn down, because the building was in a condition or state of ruin. The Stoneman House had been built—this will apply generally to the Cook hotel, to the Folsom property, and to the Leidig hotel, with all their appurtenant outhouses of all descriptions. The Stoneman House had been constructed. These buildings were in a state of ruin, all of them. The only one that I endeavored, by my action, to save from destruction, was the Leidig hotel. I recommended to the Commission at the June meeting of last year, that the Leidig house be preserved: not for the purpose of opening it, or permitting anybody to open it as a hotel, but for the use of campers. Now, it was proposed, and we did at the June meeting last year, set apart new grounds for the campers, including the grounds from the Cook hotel, on the south side of the Merced River, down to where the river comes in against the wall of the valley on the south side, near Bridal Veil; of all that territory, a large tract of new ground, including the meadow that Leidig had been using for many years, and which was formerly fenced; a very pretty meadow, small but productive—for campers. We knew that sometimes storms come up and campers are not always there prepared to protect themselves from these storms. Even the tents that many brought in were not sufficient to turn the sudden and heavy rains that come; and my proposition was that, inasmuch as the new ground was to be set apart for campers, that we preserve the Leidig hotel and throw it open, and, in such cases as I mentioned, rainstorms, the campers would be able to take refuge there. It would accommodate a good many. Well, other members of the Commission opposed that, on the ground that if we left the house open for anybody and everybody, that the end of it all would be that it would be burned up some time by malicious persons, be fired just for the fun of it, and that it would soon be in a condition so that no campers would occupy it anyhow; there would be nobody to take care of it, and that to be of any use and to be safe, it would require annual repairs, which would be expensive. And so my judgment in the matter was overruled, and I am inclined to think wisely overruled, too: at least I feel responsible for my share in its destruction. The other buildings had unquestionably reached a point when they ought to be destroyed. Why, when I was in the Assembly, and the Com-

mission and the Guardian—I believe Mr. Hutchings was Guardian at that time, were you not?

MR. HUTCHINGS: At what time?

THE WITNESS: When I was in the Assembly in 1885, elected in 1884.

MR. HUTCHINGS: Yes, sir.

THE WITNESS: When the bill was introduced to appropriate \$40,000 to build the Stoneman House, photographs of Cook's hotel and some of those other buildings were sent here and put on exhibition in the Sergeant-at-Arms room of the Assembly, for the purpose of convincing members of the Legislature that there was a necessity for an appropriation for building a new hotel. This picture of the Cook hotel, furnished you by Mr. Robinson, looked very pretty on paper, but that long wing, that low part, that seems to be a long building, is only one room deep, and the walls and the floor and the roof, all were in a condition that was disgraceful. The Folsom building was also in a dilapidated condition. It was not a thing of beauty, by any means, but there was some lumber in it that could be used in some other way to put up buildings that were necessary. Furthermore, the same may be stated of the Leidig property. There was some lumber in it that could be used to advantage elsewhere, and a great deal of the timber was rotten. Now, during all the years that I lived in Mariposa County, both before I was a Commissioner and afterwards, as long as Mr. and Mrs. Leidig ran that house, I made the Leidig hotel my stopping place, because I was on more intimate terms with those people than I was with the others that were living in the valley. The upstairs part, where the bedrooms were, was in a shaking condition. You know how a house will go when it is old and some of the timbers have fully or partly decayed; it will show it by the movement of the floors and of the walls and of the porches. And I know that, in order to make it safe there was required a considerable expenditure every year, in the way of repairs. The fences about it were all broken down and worn out, and the outbuildings, too, were in a disgraceful state. Nobody will dispute that. The house itself looked pretty well after it was repaired two years ago; that is, in 1887; yet something had to be done over every year, or it would go to pieces; and it never would have been destroyed as long as Leidig and his wife were there. I want to say, in that connection, that Mr. Leidig and his wife put in an application in 1887, the first meeting I attended there, for a five years' lease of this property, and it went in with my indorsement, too. They asked we whether they should do it or not, before they did it. But the Commission opposed it, and they told Mr. and Mrs. Leidig—most of the Commissioners were stopping at the house at the time—they told them: "As long as we are on the Commission, you shall have this property from year to year. What better do you want than that assurance? We do not like to renew that old evil that lasted through so many Commissions, of giving these long privileges." It gave rise to complaints, to claims against the State, and against the Commission, that had no foundation in equity at all; and people always were harder to control. They would consider that they had an unbridled license to do what they chose, and the policy of the Commission for several years has been gradually changing from their policy of granting long tenures to a policy of granting short tenures or permits, in order that the holders may consider themselves more responsible—more directly responsible—to the Commissioners. So we told Mr. Leidig: "Now, if we do this, a whole lot of other people that have buildings will come in and want these five and ten-year leases, and it is better that you do not insist on this. We do not want to renew that old thing, and we will assure you that you shall not be disturbed." Of course the

lease was held in the name of Mrs. Belle T. Leidig, the wife; and she and Leidig expressed themselves perfectly satisfied with that arrangement, to us or to me. The night before I left Yosemite Valley I stayed up in Mr. and Mrs. Leidig's barroom with Leidig and his wife until four o'clock in the morning, and they expressed themselves perfectly satisfied with the arrangement. They would not deny it if they were here now. We tore down those buildings then—I will say, in short, the Folsom property, and the Cook hotel, and all the outhouses, and the Leidig hotel—because they had served their purpose and were unfit; they were in a dilapidated condition, and were a disgrace to the State. All the lumber of it that was in a condition to be used to any advantage at all, anywhere in the valley, was saved and preserved from those buildings.

Q. Subsequently utilized for other purposes? A. As to that, Judge Tully, I will state that we gave, at the June meeting last year, our instructions upon these various matters. How they have been carried out, of course, we cannot ascertain fully until the next June meeting, because we hold one annual meeting in the valley. Of course, none of this tearing down had commenced when the Commission adjourned at the June meeting last, and when we left the valley. I was in the valley last August for one night. I was stopping on the road, and I went in with some parties. The removal of these buildings had not commenced at that time, so I cannot say how the material was used. Our instructions were all that could be used anywhere should be kept.

Q. By what process were Messrs. Leidig and lady gotten rid of ultimately? A. They were not gotten rid of. It was against the wish of the Commission, or, at least, a number of the Commission, I know. The first I knew of it was on a Sunday, in Fresno; Mr. Leidig came to my house and told me: "I have sold out to Cook & Barnard. I have concluded that many tourists will naturally prefer to go to a new hotel; and we have worked like slaves here in the valley for so long, and I was anxious to get out so that my children, who are growing up now, should have more advantages, see more of the world, and I have got what I consider a good offer." He explained what the offer was, and asked my opinion about it, and said that he was glad to get out of the valley, and his wife was; thought he could get into something where he was going—Los Angeles County—that he could make more money at, and where his wife would not have to work so hard as she did in Yosemite, and where his girls would have better advantages, educational and socially. And I expressed great regret at it, and I think it was a thing regretted by nearly every member of the Commission, if not every member of the Commission. The majority of the Commissioners stopped always at Leidig's, as Mr. Hutchings well knows, and everybody in the valley; that was the favorite place, that was the favorite family in the valley. If anybody was ever favored by the Yosemite Commissioners the Leidigs were, and would be yet, if they were there. And I say, in connection with the tearing down of that place, if they had remained there the proposition never would have been made to tear it down as long as it could have been repaired from year to year, no matter what the cost. The disposition of the Commission would have been to keep repairing it and bolstering it up, because it was the Leidig place.

Q. That is all you know about the destruction of public or private property? A. Yes, sir. I will tell you this much more about the Leidig place; they claimed an equity in the building. I do not know that it is necessary to state to you in detail, and do not know that I could do it with absolute correctness, what that equity was. I know that they have explained the

matter fully to me; gave me a great many papers bearing upon the subject, in order that I should introduce a bill at the last session of the Legislature for their relief—a claim—and I did introduce it.

Q. Do you know if they presented their claims in equity to the Commissioners? A. No, sir; they never did, to my knowledge.

Q. The third charge here is: "The unnecessary destruction of timber in the Yosemite Valley." A. Well, about that my testimony is practically different from that of Mr. Robinson. In the first place, he has given, while I was present, this committee to understand that the Yosemite Valley is sparsely wooded; at least, I so understood a part of his testimony last night. That is not true. The bed of Yosemite Valley is thickly wooded. There are open places, of course. There are these meadows that have been spoken of that are open naturally. In those places, where they are cultivated at present, what they would be if not cultivated, I do not know. In those that have been fenced for a considerable time, what they would be if not fenced and closely fed, I do not know. But the rest of the valley outside of the meadows is thickly wooded. The growth of the young timber is marvelously rapid there; all the brush and undergrowth. Before I was a member of the Commission, I heard that question under discussion before the Commission at one of the annual meetings, and it was said then by some member that one of the hardest problems that the Commission would have to deal with in a few years, was the disposal of the dense growth of timber that was coming up, that underbrush, and the fear was expressed that the Legislature never would give the Yosemite management sufficient means to enable them to guard against that peril.

Q. Against the encroachment of the undergrowth? A. Yes, sir. Now, as to the cutting. You can go through Yosemite Valley and find evidences of the cutting of timber running back twenty-five or thirty years ago. You can find where crops of trees were cut a great many years ago, and you can find places where the stumps have rotted so they could be easily removed. This cutting of timber in Yosemite Valley has been done for thirty years past, year by year, by different persons; some of it was done before the Commissioners had anything to do with Yosemite, and some since. My judgment about the trees—beginning to particularize a little—my judgment about the trees that were cut about the Stoneman House is, that they were necessarily cut, every one of them. The Stoneman House was built in a forest of trees; naturally the first thought, the first necessity, would be to cut away enough trees so as to give room for the foundation. The next that would naturally occur would be to remove all such trees as stood in that position where they could imperil the building and the lives of people that were likely to be about the hotel. Those had to be taken out, everybody will admit. When the Commissioners went there for the purpose of designating what trees should be cut—those that the Commission deemed likely to be in such position as to imperil the building—the Commission also noticed some other trees that were neither beautiful nor useful, and they were ordered taken away; but very few, however. I have been at the Stoneman House since it was finished—I was there last summer—and I say that there were no trees taken away from the vicinity of the Stoneman House that were not an improvement to the location; an improvement to the ground; an improvement to it looking toward it from any point that you could select, or looking from it to any point. I am opposed, in taking out trees that way, to taking them out and leaving the stumps there. There were some stumps left.

Q. You give it as your opinion that there has been no unnecessary destruction of timber? A. I am speaking of that place. I want to say,

in regard to the views, I think the opening of the view from the Barnard hotel to the lower Yosemite Falls was an advantage. I do not know how many trees it was necessary to cut there, but it was an advantage. I have never approved, and do not now approve, of the cutting down of trees up there and leaving the stumps in, because there is no beauty about the stumps, no matter if the removal of the trees does open some new view or improve some place. I do not think it was good policy to cut the trees near Mr. Hutchings' house; there were some oaks there, and I was surprised that they were cut; I do not know where the order came from. There has been some testimony, I believe, before the committee, in regard to the cutting of timber since the last meeting of the Commission. That I know nothing about. None was ordered to be cut at that time, except what I have mentioned. There is ample timber in the Yosemite Valley; in fact, there is too much. I am opposed to cutting down the big trees, but I am in favor of keeping out this bramble and underbrush that closes up roads, and closes up trails, and obscures views; it is not beautiful. That is the reason that the Yosemite is not as beautiful to-day as it was twenty-five years ago—the reason that the Commission have never had the power or financial ability to keep that down. I think there has been some injudicious cutting of trees, but that, if it be one, has been very much exaggerated.

Q. That closes what you wish to say about the unnecessary destruction of timber? A. Yes, sir.

Q. The next question is: "Clearing and plowing valley meadow land." A. Well, most of the land that is cleared in that valley and that is plowed, was cleared and plowed and under fence when I went to Yosemite Valley first. The Lemmon orchard was there. There was an inclosure about Mr. Hutchings' place, and a good deal of fencing. There was a tract of meadow land; a large tract fenced in between Barnard's and Cook's, and from the appearance of the fence and the old walk across there, it had been fenced in a great many years. That was not plowed, however. There was fencing at the Harris place, that which is now held by Coffman & Kenney. A great deal of fencing, a great deal of territory fenced in. And there was another lot fenced in for campers use. There is a piece of ground adjoining the Lemmon orchard, which is attached to the Stoneman House. There is a tract there which is under fence, and which has been cleared of small brush, and some of the larger trees have been taken away. Most of them have been left standing, however. That was seeded to grain or hay, when I was last in the valley. Now, I will state to you that it was conceded that it would be necessary to have cows around the hotel. That is, they should, in some way, have milk; and there is nobody, of course, who hauls milk in there for sale. And it was considered necessary that the Stoneman House should have some pasturage attached to it—a few acres—enough to sustain a couple of cows, anyway, or three cows; and we did not wish to give permission that these cows should be allowed to run at large. That has always been the objection—to allow any stock to run at large—because it is dangerous to campers, dangerous to people on these trails. It would be a very awkward predicament for a person to be in, coming down a trail, looking down two or three thousand feet, to meet a cow or two or three horses; it would frighten the one he was riding on. And so we have endeavored to prevent anything of that kind. Mr. Cook was allowed to fence in a certain tract, which was obscured there, and plow it for that purpose. As to this talk about using these meadows and destroying the botanical value of what they would produce, if any, and as to the fences preventing people going where they pleased, there is a good deal of sentiment about

that—a good deal more sentiment than there is sense. There is not any lady who visits Yosemite Valley, that is apt to go on to those marshy meadows. I know that the meadow between Barnard's and Cook's, which is fenced, but which has not been plowed, a great deal of it is under water, which is backed up from overflows. Bridal Veil meadow has never been plowed in the years that I have been there, and I do not know whether it ever was. It never could be; it is too marshy. Now, people are not going out into those meadows to get any views of any place. I am opposed to farming Yosemite Valley as much as anybody, but nearly all these fences have been there for years. I suggested at the last meeting of the Yosemite Commission that they should tear down all those fences between Cook's old house (of course, it is not there now, but I speak of it), Cook's old hotel and Barnard's, because the fence has become old. Well, it is in the same condition as those buildings were which were torn down, dilapidated. It is not beautiful. It is not plowed, and I think it would be a good thing, on the part of the Commissioners, to remove that fencing altogether—turn that meadow open.

Q. About what proportion of the floor of the valley proper has been inclosed with these fences? A. Well, it would be difficult to say.

Q. One third, or one fourth of it? A. Of course, the valley extends through six miles of length. Mr. Mills says nine. I do not consider that the cañon, from the Cascades up for two or three miles, is any part of the floor of the valley. It is more cañon, but say six or seven miles. I think altogether there is not over two hundred acres fenced. That is not all in one spot, remember.

Q. We understand that. A. The valley, for six miles, will average, I think, one half a mile wide, or nearly so. In some places, it is much wider; other places, it is quite narrow. It will average one third of a mile wide, I think, for six miles. You can judge by that how the amount of fencing will compare with the rest. I do not think there is over two hundred acres fenced.

MR. GARDNER: What about the beautiful groves of cottonwood trees that were cut down? A. I asked Mr. Robinson about that last night, and I cannot get the particular grove that he refers to fixed in my mind. As I understood it, he referred to two groves of cottonwoods; one across the river from Fagenstein's place, and another grove across from Barnard's. Now, in respect to the grove across the river from Barnard's, there was no injury done at all by cutting those trees, that I could see. They stood in the way of the view from the south side of the Merced River along by Barnard's. Mr. Hutchings owned those buildings at one time, and it was considered a central place in the valley. There the Guardian's office has been; there the Post Office is, and there, if there was any particular celebration of any kind, the crowd gathered; and, from that point, the best views are obtained of the Yosemite Falls. Now, these cottonwoods across the river there did, to some extent, obscure that view from that side. I think, originally, the proposition was to cut out a few of those trees, so as to enable people to see. I deny that the cottonwood trees that grow there were beautiful at all. There are many cottonwoods along the banks of the river that are pretty, you know, alder and trees of that description on the rivers and streams, that are very beautiful, that have not been molested; but I do not think there were any trees that were worth preserving at that point.

MR. TULLOCH: The land which you have just spoken of being inclosed between Cook's and Barnard's hotels, was that plowed up or not this fall? A. Well, sir, I do not know. If it was, it was not by order of the Com-

mission. Of course; I have not been there officially since June. I have not been there at all since August. I was there for one day in August; that is, I went in on the stage one day and went out the next; and if that ground, that you speak of, or any of it, has been plowed, it was not plowed by any authority given by the Commission at the June meeting, and by no authority I know of. Here is a building, I see, that Mr. Robinson referred to last night as being torn down, which I have not mentioned. That is the Cosmopolitan saloon. Well, the lease had expired on the Cosmopolitan saloon. It belonged to the State. There was a man—he is a friend of mine, too, Captain E. S. Utter—who was keeping a saloon in it. The Commission concluded that the saloon, unless run necessarily in connection with the hotel, was not a good thing to keep up in the valley. It was the cause of little disturbances occasionally, which were not pleasant to tourists, and it was concluded that it better be stopped; that they could use the building as a Guardian's office. The building belonged to the State; it did not belong to any private parties. There were some fixtures inside of the building which belonged either to Utter or Coffman, and Mr. Utter complained very much about what he called the destruction of those fixtures. I was not on the Commission at that time, and he came and consulted me as an attorney, upon the proposition of bringing an action against the Commissioners for damages. Now, Mr. Robinson said last night that he supposed that Mr. Coffman was placated for that injury, by being granted an exclusive privilege for the saddle train. I presume this committee does not care to deal in suppositions. That is, of course, not true.

MR. TULLY: The next charge is: "Debarring the general public from the joint and legal use of the valley." A. Well, I do not know what that means.

Q. I understand that in the course of their management, if they have done anything that the Commission have done, or sanctioned the doing of anything there, which tends to interfere or interrupt tourists and visitors in the valley in their free enjoyment of the valley? A. No, sir; not that I know of. I think the Commission—the majority—have made mistakes. The Commission itself, as a body, have differed, and since I have been on we have had debates and discussions.

Q. I understand it probably applies more directly to the fencing; fencing up the valley; depriving campers of the ground that they would probably like most to occupy to camp upon. A. Well, I have heard campers say—that is an opinion—that they would like to see all these meadows open, and be permitted to camp on all of them; but, of course, some of this was fenced long ago, and orchards were planted, and some has been under fence a great many years, and they have been using it for pasturage in the valley. It was considered necessary. The Commissioners did not want cattle and horses to run at large, and it is necessary to have both in the valley, and therefore there had to be some place fenced to keep them in, and there had to be garden spots to be used in connection with these hotels, and used for the benefit of campers themselves. They could not, of course, haul vegetables in there; could not have them always through the medium of peddlers. I have heard campers say these meadows ought to be all open, and they have complained that the meadows were fenced. I have heard campers complain that the camping grounds were not extensive enough, and we endeavored to remedy that at the last meeting of the Commissioners. That was before the "Examiner" commenced the attack on the management. We endeavored to remove that by setting apart a new ground, and including a meadow which had been formerly used in

connection with Leidig's hotel. After the "Examiner's" attacks commenced, I was at Wawona perhaps six weeks; that is on the road twenty-five miles from the valley, and a great many campers passed there—all from the southern part of the country—from Merced, Fresno, Tulare, and Kern, in that direction; all the campers came that way, and these attacks had commenced in the meantime, and I was noticing them every day, of course; and I made it a point, without stating and explaining that I was a member of the Commission, to inquire of those people as they came out. I found that nearly all the people on their way went in with the idea that they were going to be robbed and mistreated, and that they nearly all came out, or all came out, with exactly the opposite opinion. Of course, you want to know what the public complained of. I do not mean the "Examiner"—I do not want to flatter the reporter. But the campers, as they came out of the valley, unanimously, in my experience—and I interviewed a very large number—denounced the charges against the Commission, but two. That is, they said they thought that these meadows ought to be open, so that they could camp upon them; but, at the same time they admitted that, if they all were open, that the campers who went in in the early part of the season would get all the benefit, and those who went in in the latter part of the season would not get any benefit from it. That was one of the things they found fault with, and the other thing was the tolls, and the tolls on the road outside of the valley. You understand that the Commission has no power to control the tolls on these roads.

MR. TULLY: We understand that perfectly. A. The campers complained of that, and the complaint was directed more against the Boards of Supervisors of the counties that permitted these franchises and allowed the collection of tolls than it was against the Commissioners, because they realized that the Commissioners could not control them.

Q. Is it not your opinion, then, Mr. Goucher, that the building of those fences operates as a barrier to the enjoyment of tourists and others going into that valley? A. Well, I am opposed to wire fences. Yes, I am opposed to fences myself.

Q. You think the valley would better subserve the public interest if those fences were removed, except what is absolutely necessary? A. I think there are a good many fences absolutely necessary, and there are some spots inclosed, as I have explained, that are wet and damp, and muddy, where people would not go if they could, if they were opened; but I think the best policy is to have as few fences as possible. There are some fences that could be disposed of; and especially the wire fences. I thought that was a piece of folly. They were constructed mainly during Mr. Dennison's term; perhaps some during Mr. Hutchings'.

MR. HUTCHINGS: No.

THE WITNESS: No matter when they were constructed, they were wrong. If fences were necessary in the places even where they were put, it was wrong to put wire fences, because they are dangerous.

Q. They should have been built of different material? A. In some other way; and I think there are some fences there that ought to have been removed. I do not think there is any fence that has been put up since I have been a member of the Commission that ought to be removed, but I think there are some other fences that are unnecessary, and some inclosures that ought not to be, and that some of the fencing is of the bad character I have mentioned.

Q. Do you think the quantity of land assigned to camping purposes is adequate to the demand? A. Well, I do not know. Yes, it is adequate to the demand for camping purposes. If you mean by that if it was ade-

quate for the demand for feed of the stock of the campers, I say no, it is not, and I do not believe the whole valley, if it was opened, would be, because the people who went in early in the season would not feed at all; when the feed was good they would not feed their stock at all; the result would be that every one of those meadows would be completely eaten out and fed. The campers who went in there would go in without any chance to feed their stock on the meadows, but would have to feed altogether. And it is the same way, Mr. Tully, now with respect to the grounds assigned to campers; those who go in early, of course, get the best feed; their stock eats out what feed there is; those who go in in the fall have to feed their stock.

Q. Is it or is it not true that the greater portion of the fences there now are dedicated to the use of those persons who own the privilege of running saddle trains; that is, Coffman & Kenney, and the care of their stock?

A. No, it is not true.

Q. What proportion of it is? A. Well, I presume one third of the fencing perhaps, or less, in the valley is the fencing inclosing land which they are allowed to use under their privilege.

Q. It has been made to appear, or at least it has been attempted to be made to appear, Mr. Goucher, that it is absolutely necessary, in order to secure the necessary amount or number of saddle horses and conveyances and vehicles of whatever characters necessary to the accommodation of those tourists and visitors, that there should be maintained a saddle train permanently there in the valley? A. Yes, sir.

Q. And upon that is predicated the justification of leasing this fencing, and fencing it up for Coffman & Kenney? Now, looking at it from a standpoint as a committee man, one of those Commissioners, independent of how it would affect the profits of Messrs. Coffman & Kenney, as to whether they were required to bring their feed inside and keep their horses up and feed them, whether it would not be the better policy to abolish that pasturage system that is kept up there for the accommodation of those men, and, as a matter of course, to decrease the expenses of maintaining their animals, whether or not, independent of any consideration as to how it would affect those gentlemen, but simply as to how it would affect the valley, what is your opinion with regard to the propriety of abolishing all that pasturing of stock in there inside of those inclosures by those parties who lease them for the purpose of the saddle trains? Do you understand what I am trying to get at? A. I do not know that I do exactly.

Q. I will state a hypothetical case. Supposing the State were to abolish the privilege of renting the pasture land to parties, and simply rent them the stables; a man comes and rents the privilege of running a saddle train. The State says to him, "Very good; you may run as many saddle trains as you please and bring as many animals here, but you shall not fence up the valley and pasture there. You must foot your bills by bringing your provender and feed for your horses from the outside and keep them in stables." Of course, that will lessen their profits, but has the State anything to do in the management of that valley—is it necessary that they should look as to how it will affect somebody who wants to run a saddle train there? Now we are supposing that you are looking at this matter as a Commissioner, outside of how it affects Coffman & Kenney, or anybody who wants to run a train; whether or not it would be the best policy for the State to say, "Here, we won't fence up this valley at all, except what is necessary for the use of the hotel: but if you want a saddle train, bring it in here; we will give it to you; we will build you stables in appropriate places, but you must bring your feed from the outside, and you shall not

fence the valley up for the purpose of keeping your horses in; in other words, you must keep your horses up and feed them with feed brought from the outside?" A. Do you mean how it would affect Coffman & Kenney?

Q. No; not how it would affect Coffman & Kenney; but would it strike you as being a good proposition for the State? A. I hardly know how to answer that.

Q. Because it is not supposed that the State is at all concerned whether Coffman & Kenney, or anybody else, who runs there, makes any money. That is their business, and not the State's? A. The Commissioners require, however, certain things of these men. For instance, they will not allow them to charge more than a certain price; they fix the figures. They compel them to submit to a whole lot of rules and regulations, some of which are complained of by them as bringing on them hardships. They complained about the difficulties of getting any feed at the seasons of the year when they want it.

Q. It lessens their profits, as a matter of course? A. They complain of inability to furnish stock in proper condition without the use of some pasture. They run short of feed sometimes, and they are required to have their whole stock in there ready to commence at a certain time, and that is before there is much travel; but you never can tell from one day to another, at least from one week to another, how much travel there will be, or how many people there will be to accommodate. The result is, these people are dealing in uncertainties. They say: "Now, you require us to bring in this great lot of stock. We cannot afford to bring it in, and we cannot either have it in good condition without having the use of some pasturage here. Our stock won't do well all the time kept up."

Q. When you say they cannot afford it— A. That is a question touching the profit; but when I speak of the condition of their stock, that is a question that affects the convenience, and pleasure, and safety of the people who go there.

Q. Now, is it not a matter of fact that there are facilities for communicating from the outside of the valley; that is, from the exterior limits? Let us make another hypothetical case. Supposing that the Commission were to refuse to allow any grazing privileges there at all. Mr. Jones and Mr. Smith want to obtain the privilege of running saddle trains. The Commissioners say to them: "Very good; we will grant you the privilege; we will rent you stable privileges, because they do not take up much ground. We can furnish you all the stable room you want, but if you want to keep one hundred horses, or ten horses, in order to meet the demand"—as a matter of fact, that travel does not all come at the same time. In the beginning they will need a few horses; after awhile a few more; and when the rush comes, they will probably need one hundred head, and then it gradually diminishes until the season is over. "Now establish your ranch outside of the valley, and get your horses and give them pasturage there, and you can easily communicate with the sources from which these tourists will come. You always know it twenty-four hours beforehand, and when the travel is beginning to come, you can bring in ten horses. Next week, if the travel is increasing, or you notice that visitors are coming, bring in twenty horses, and in proportion as the travel increases, you can bring your horses in, and, as it decreases, send them out. You can supply your stables from the outside, and do away with the fencing up of the valley." How does a proposition of that kind strike you? A. I think that is good. I think it is a good proposition.

Q. Do not you think it would be better than to fence up that valley and allow them to pasture their horses there? A. I do.

Q. I know something about the cost of taking care of horses. They could keep a ranch out there, and could furnish any number of horses upon six or ten hours' notice. A. Here is a difficulty the Commission has had to deal with: Of course, you know, some inclosures are absolutely necessary. Then it is a question how far above that actual necessity the fencing should go. In considering the matter there are two classes of people who visit Yosemite Valley to be taken into consideration. First, the tourist class, who come in by public conveyance, and after they get in there they expect to be provided or expect to rely on some kind of public conveyance to transport them over these trails. The object the Commission has in view is to make that transportation for them inside of the valley as cheap as possible; but, on the other hand, there is another class of people who go in there with their own conveyances and with their own animals to transport themselves about the valley, and they want all these inclosures open, so there is a conflict of interests. In endeavoring to cheapen the transportation for those who go in without their own methods of conveyance after they get inside, in order to do that the policy would seem to be to throw as many advantages in the way of the saddle train line as possible. On the other hand, to benefit the camping public the policy would seem to be to have no fences at all, but turn the whole valley open and let them camp where they please. Now, the course pursued by the Commission has been between the two, to divide the honors between the traveling public, who expect to get transportation on the inside, and the campers who bring their own transportation.

Q. Now, Mr. Goucher, the general tendency of all the evidence from both sides here tends to show two things: One that, notwithstanding the so called exorbitant rates, as some class it—and others say they are moderate: but the rates of board for hotel accommodations there, as a rule, tourists do not complain of those prices. The complainant is an exceptional case. The charges for those horses some consider exorbitant, but I understand the great majority of tourists do not object to those charges; they say they are reasonable enough, if they take into consideration the character of the service and everything. Now, even admitting that they had to take their horses on the outside and keep their ranch and their stables, the principal part of their horse business out there, even if we could have an extra amount or a raise in the price of the service in the saddle train line there, do not you think that tourists would be better satisfied to pay an extra 50 cents a day for their horses to go over the mountains—\$3 50 instead of \$3; would be better satisfied with that expenditure of 50 cents, than they would be to go there and find the valley in the condition it is? A. I do not think the tourists would, if you speak of those who go on stages; I do not believe there would be one in a hundred who would complain about the fences. The great bulk of the tourists there look at those wonderful Falls, and they make those trips over those wonderfully constructed trails to the different points and take in that view, and the fences are of no consideration. There is only an exceptional case of a party who will say anything or even notice the fences. But the other class of tourists, that is, those who come as campers—

Q. Visitors we call them? A. I will speak of them as campers, because they come by their own conveyances. The campers do object to it, as you say, and they would rather have the price of horses raised 50 cents a day, or \$1 a day, for that matter, because they do not patronize that business; they bring their own horses; or, even if they did patronize it, I believe they would prefer to have the price raised and these fences removed, except where they are actually necessary.

Q. You will understand that the nature of our investigation is not, perhaps, so much to convict somebody of doing something, as it is to ascertain what the management has been, and to suggest, if possible, some improvement on it, and we want all the information in regard to that; and the idea has been suggested, and it suggests itself to most any reasonable man, whether or not there can be an improvement upon the present management in the line which I have indicated? A. Well, I agree with your suggestions in that particular, without going further into detail. I think that would give a great deal more satisfaction to campers, and perhaps to the others.

Q. You think it perfectly practicable to obtain the assistance necessary there for the saddle trains, etc., for tourists and visitors; it would be perfectly satisfactory, and it is perfectly practicable to require them to do as I suggest: keep their horses on the outside, and bring them in in small lots and keep them in stables? A. I think they could do that; they have a telegraph line, and they know when a party leaves San Francisco.

Q. I was going to ask you that question? A. They can know two days before a party reaches Yosemite that it is coming, and how many there are, and how many are able to ride on horseback, or to ride on horseback when they get in the valley.

Q. A condition of affairs like that would do away with the necessity of inclosing that park to a very great extent? A. Yes, sir; it would, if those saddle train men could get accommodations outside, as you say.

MR. HUTCHINGS: Concerning the charges for horses now, I understand the price is \$3 a day. I believe that fifteen pounds of hay per day—these are the army rations—at 3 cents a pound, that would be 45 cents; and at 4 cents a pound for the barley, ten pounds would be 40 cents, making 85 cents. I would like to ask if \$2 15 per day profit upon a horse, and for his wear and tear, would not be fair compensation, even though they should keep them up in the stable? A. If I were in the saddle train business I think I would consider \$2 15 a very good profit. I do not know what their other expenses are.

MR. TULLY: Put it at \$1 a day; then \$2 would be a very handsome profit, I think? A. I think so.

Q. You think there would be no necessity for the Commissioners allowing them an extra dollar? A. No, sir. Of course, I am no expert in this livery business. I never ran a livery stable. I have gone to a livery stable and hired horses a good many times, and I have nearly always thought I was overcharged, but I suppose if those fellows came and hired me in a lawsuit, they would think they were overcharged, too. I am not an expert in that line. Of course, these saddle train men require a good deal of help. There are a good many men required, and it must be remembered too, that they have got to have in the neighborhood of one hundred head of horses in the valley; many a day there are not over five or six horses out of the whole number that go out at all on a trip.

Q. For the residue of that one hundred, they could keep them fifteen miles out on a farm, where they could keep them, at perhaps, one half the cost that they do in there, and it is admitted that they could have ample time to bring them in. It would not operate to their disadvantage. A. That system you proposed strikes me as being a very good one, but if we had the time, I could point out where there would be, perhaps, some study of details necessary.

Q. I am only speaking of it in general terms. We will work out those details. A. I do not know.

Q. For instance, you say it could be known that a party leaves San

Francisco at a certain time, and they could send out and get enough horses to accommodate the party? A. Well, sometimes a party comes in and stays two days, and they expect to be in the saddle all the time, going, in order to see as many points as possible in a short trip. Some parties come in and stay one day, and go out and expect during that one day to be in the saddle constantly; and another party will come along that will spend a week in the valley. Of course, you might provide for a party, say of twenty, but find out, when they get the horses in there, that they need a change of horses all the time during the trip.

Q. The supposition is that, in a system of that kind, they would not reduce themselves to the actual demand. They would always have to have some surplus horses just as livery men do; they have to keep a surplus of horses, because they do not know how many horses they are going to let in a day, or how many horses will be sick. Those are matters that I am familiar with? A. With proper consideration as to detail, I think your suggestion is a good one.

Q. Admitting that the cost of keeping a horse is \$2 a day; they would make \$1 a day for each horse they use? A. If they could have all their horses out every day, as I said before, I think a great deal less than \$1 a day would be sufficient profit.

MR. HUTCHINGS: I would like to ask the Senator if he does not know that they feed but very little to the horses; that the horses have to pack people up and down those mountain trails all day, traveling up and down, and then they have to travel all night, for the most part, and get their living? A. Mr. Hutchings, I will answer that question; that, of course, I will have to answer on information. I have heard it charged in Yosemite Valley, every time I have been in there, that these saddle train men did not feed their horses; that they wanted to depend, and did depend, mainly, on what ground they were allowed to use, and I have heard it charged that the horses were in an unfit condition. Every year, in June, we inspect their horses; we have them drive their horses up, and we examine them first; look at them when they are saddled, and then we order these fellows to get up all their stock, so that we can inspect it, and we look at it after it is saddled, and examine the saddles, and examine the wagons to see in what condition they are, and the horses; when we have examined them, they have always appeared to be in fair condition. If I were going out to buy a horse, I would not buy any of them, because they look rough to me. Coffman & Kenney, when asked about it, and their men, say, "Well, we feed them; we feed those that we know are going on a trip, and even if we do not, the others we feed during the busy season, and we feed a great deal." Those are the kind of answers they make to us. Sometimes I have thought the horses were not fed, but the fact that there has never been any accident on the trails there would seem to show that the horses are strong enough, and fit for the service; and they say it requires a particular kind of fitness in the horses; some horses won't stand the work at all; from nervousness they won't stand it; and they have got to exercise care in choosing their horses that do this work. As long as the horses do the work, and do it safely without accident, it seems to me that answers all the requirements. I have thought myself that they did not feed enough; that the horses ought to look stronger; they seemed to look as though they were not strong, but I would see big two hundred-pounders get on them and ride them all day up to Glacier Point, and the horse would look as well when he came back as he did when he started. What appears to be so on the outside would not be a safe basis for any judgment. I am like you, though, Mr. Hutch-

ings, or like your question indicates; I do not believe that they feed as much as they represent they do.

MR. HUTCHINGS: And there is another thing. I will say that in the morning they send out their men, say at five or half-past five, and you will find them coming halloabaloo and helter-skelter, driving them as fast as they can; and to see the dust they raise! No matter if people are passing that narrow causeway at that particular time, they have got to jump off or be almost driven over, as they drive them so carelessly. Of course, this is before they are saddled; they have been out all night, and they are driving them up to be saddled.

MR. TULLY: The next question is: "Holding annual meetings with closed doors, in violation of State laws?" A. Well, they did that.

Q. How often? A. Well, I got very angry about it. At the time I presented the Anderson claim, after I had presented that claim, after other matters were brought before the Commission, they locked themselves up, and we all had to take a walk. I complained of it then, and when I came to the Assembly—I was elected to the Assembly in 1884, and with Mr. Long, of Tuolumne County, who was on the Committee on Yosemite with me, formulated a bill requiring them to hold their meetings with open doors.

Q. This happened before that rule was established? A. Yes. I may have said in my testimony that it was in 1885 that I appeared before the Commission with that claim, but it was in 1884, and this happened before that law was passed; but I think they did hold another meeting the next year, 1885, after that law was passed, because I went in there for the purpose of appearing before them; they were holding some kind of a private meeting; I think Mr. Sprague and Mr. Drew were there.

MR. SPRAGUE: That was in 1885.

THE WITNESS: That was 1885. It was after the passage of the law, and in the face of the law they held a meeting with closed doors—that is, they held a part of the meeting with closed doors. Well, I was indignant about it, because they had elected me their attorney after I presented the Anderson claim; at the same meeting they elected me their attorney. I did not solicit the position and I did not fill it. I talked over with Mr. Hutchings one or two matters on one or two occasions, and I talked over with some of the Commissioners, perhaps, but they would not fix any compensation, and I did not like the position. However, I did not resign. I went up to that meeting to present this matter again, and Mr. Drew was there, and Mr. Sprague and others, and they held a part of their session with closed doors, and I was their attorney; they did not invite me in, and I resigned. I think my letter of resignation is on file likely, and it may show why. The real reason was I did not approve of their violating the law. Some of them afterwards said that, it being a new law, they were not mindful of it at the time; that it was a momentary oversight; and others—I believe, Mr. Raymond—well, he is dead; I will not mention his name in the matter particularly. I will say, however, that there was one or two of the Commission who openly defied the right of the State to legislate controlling them. They claimed they held authority from a higher power—from the Federal Government—and that they were not amenable to any law that the Legislature of the State would pass, because they said that that would be virtually managing the valley through the Legislature, instead of managing it through the Commission. That was a high-toned view taken, I believe, of one or two of the Commissioners.

Q. So far as the State was concerned, they considered themselves a law to themselves? A. Yes, sir; they said when the Legislature undertook to

prescribe rules and regulations for the government of the valley and for the Board, it was virtually taking the management out of the hands of the nine Commissioners mentioned in the Conness bill. I took an opposite view, that the State Government held it in trust.

Q. The State Government held it in trust, and was responsible for its management? A. Yes, sir. Well, I differed with the Commissioners, anyway. None of those Commissioners who held that view are present now. They violated the law then, but I do not think they did it willfully. I did then. I thought they were too arrogant and aristocratic to suit my views; but I had a good many grievances against the Commissioners, at least, I was led to have a good many, by being in the county there. There was a good deal of complaint about some members of the Commission; and the complaints I had heard, and those that I believed, were more against individual members of the Commission than against the Board.

MR. GARDNER: Have they ever held meetings with closed doors since? A. No, sir; they have not. I will explain. It is the custom, when the Commission meets, for the President—that is, the Governor—to appoint sub-committees on various subjects; that is, to expedite business in the valley; and the sub-committees are directed to go and examine in respect to the matters pertaining to that committee, and to report. Sometimes those committees go off by themselves and look around the valley; look at roads, for instance; the Committee on Roads, and Trails, and Bridges; and sometimes they come back, and they may hold their meeting private, in getting up their report; but, when they make their report, they make it in the full Board, and that is open, and the business transacted. There is only one violation of the law that I know about, and that is claimed to have been an oversight by those who did it.

MR. TULLY: The seventh charge is: "Violation of State laws regarding the granting of exclusive privileges in the valley?" A. Well, sir; there have been no exclusive privileges granted since I have been a member of the Commission. If there were before, the circumstances are not known fully to me, and, unless a particular case is mentioned, I do not care to testify about it, because the record of the Commission might differ from my recollection or understanding of the matter. There have been no exclusive privileges granted since I have been a member. It has been charged—I might as well come to that point at once—it has been charged that Coffman & Kenney have an exclusive saddle train. That is not true. It was not the design of the Commission to give them an exclusive privilege. They have been expressly told—they were expressly told at the last meeting of the Commissioners, and at the meeting before the last—that they were to understand that they did not have any exclusive privilege; and the privilege that they do hold, in writing, the lease, declares it; declares that fact. And I will tell you another thing: the lease that Coffman & Kenney hold is virtually a lease from year to year. There is a resolution on the minutes of the committee stating how that contract shall be construed. The least violation on their part of the terms of the lease, subjects the lease to cancellation by the Commissioners; and, furthermore, the Commissioners reserve the right to cancel it at any time, with cause or without cause.

Q. You are a lawyer. What do you understand to be the difference between a single privilege and an exclusive privilege? A. There is not any difference in effect, but I deny that it is a single privilege that Coffman & Kenney have. It never has been a single privilege. It may have been a single privilege for a short period of time, but the Commission are open to grant a lease to anybody, if a proper person applies. If the Commission

are satisfied that the party applying will render good service, that he is a responsible man, that he will provide horses that are safe, and that he will keep enough at all times to accommodate the travel, the Commission are ready to give him a lease. We have, I believe, given Mr. Clark a privilege of the same kind, but he has not utilized it. Now, that brings us back to the point which Mr. Mills explained before the Senate committee; that there has been difficulty as far back as I have known anything about the management of Yosemite Valley, in dealing with people who were applying for leases for various business. We would give the privilege to two or three men to do a certain thing, and they will consolidate secretly, and the Commission cannot help it. The hotels have done that, and the Commissioners ascertained it by accident at last, and found out that they were all pooled. It did not matter where a man went. On the outside they appeared to be fighting for the travel. Leidig was trying to get all the travel to go to his hotel, and the other fellows were trying to get it to theirs—Cook and Barnard—and they were making a big struggle on the outside, and to the Commissioners, and to the public, it appeared that there was a contest going on between these men; whereas, secretly they had an understanding that if a man went to Cook's hotel, there was a certain pro rata that was to go to Barnard and Leidig in the end, in the settling up at the end of the season.

Q. It was a hotel pool? A. Yes, sir, of course; it was discovered in one case; I cannot be sure that we discovered it in other cases. For instance, now, there are two men in Yosemite Valley at the present time who have the privilege to sell merchandise. We were compelled, for the convenience of people who stopped at the Stoneman House, to permit Mr. Cook to sell certain things there, and to allow him to keep liquors. Of course that is a necessity of a hotel—there are many people who consider it so, at least; I do not say that I do—and a billiard-room, and certain articles that tourists would want; for instance, ladies frequently come there and have no proper ulster, no proper hat, rubbers, and one thing another that they need to have in taking some of these trips; they need to get them somewhere. There was a store privilege, to a limited extent, granted to Mr. Cook, also there is one granted to Cavagnero; those men may pool their issues; they may fix prices on certain things that are exorbitant. We think it is the best policy to control prices and limit the number of men that are engaged in business, but compel the service to be of the best kind, and prevent extortions. Now, it has not been a policy of the Commission to grant an exclusive privilege, or a single privilege, to Coffman & Kenney, or anybody else, engaged in the saddle train business.

Q. Speaking of Coffman & Kenney, I will ask you, Senator—it is conceded that those privileges are leased there; let out to certain parties under the rules? A. Which; the saddle train?

Q. Any privileges; all privileges to do business there? A. Yes, sir.

Q. There is a certain competition for the bids, as far as that goes? A. Yes, sir.

Q. And after they are let, that ends the letting process? Only one privilege is granted, say to Coffman & Kenney? A. The next day you can go and ask for a privilege too.

Q. For the same privilege? A. Yes, sir. Here is the idea. We will say that at an annual meeting last year, we let Coffman & Kenney a privilege for the saddle train; now, we adjourn; the executive committee have full power until we meet again, as a general committee, to lease to anybody else also; to give anybody else a privilege. At the next meeting the application can be made to the full Board, and when the full Board is

not in session, then anybody can apply at any time for the privilege to the executive committee.

Q. I will advise you that it is in evidence here by some of the Commission that once they let these privileges, they let them for the term say of one year, and after that no bids are received. You say they may apply; do you know of any instance in which they may have applied and been refused? A. Well, I don't know, because the correspondence with the Commission is carried on through its Secretary—either through the Secretary or through the Guardian—and of course many members of the Commission do not see the correspondence until the annual meeting. Many letters are sent to the Guardian and many to the Secretary that I do not see until the Commission meets, at the same time of its regular meeting, in the regular term.

Q. Coffman & Kenney hold a lease there in which they are granted the privilege of furnishing the tourists with vehicles or conveyances, horses, and so forth? A. Yes, sir.

Q. They have also leased the privilege of those inclosures? A. Yes, sir.

Q. Now, isn't the operation of such a lease as that to Coffman & Kenney, or to any other party, granting them the privilege of running their trains there, and leasing to them the available ground, the available pasture necessary for such purpose, is it not virtually an exclusion to others in its operation? A. So far as leasing the ground is concerned, it is virtually excluding others from those grounds; but so far as the right to conduct a saddle train business is concerned, it don't exclude anybody, because the Commission don't bind themselves in any way at all to refuse the same permission to other parties. Of course, we can't lease the same piece of ground to two parties.

Q. Conceding that Coffman & Kenney have leased that privilege, and obtained possession of these lands and inclosures for their own purposes, doesn't that tend, and isn't the operation of such a lease as that, doesn't it put any other person who might want to compete by a subsequent proposition, or subsequent application for a privilege, wouldn't the better condition of Coffman & Kenney exclude competition on even terms? Could an outsider, after they have secured those privileges, come in there and successfully compete with those parties who have that privilege? A. No; he could not have the same premises, of course; could not have the same use of those premises that Coffman & Kenney have; that would be a physical impossibility.

Q. Consequently it is a virtual exclusion of competition? A. No; I don't say it is.

Q. They owning all the desirable privileges there in the shape of inclosures, it virtually excludes the competitor from entering and applying for those bids upon an equal footing with those who have those privileges? A. No; it don't do that. It is true Coffman & Kenney have that property leased, and for that purpose; at least they used it for that purpose. Now, it don't shut out any competition, if we should let somebody else have the privilege; it don't shut out any competition except so far as it applies to the use of those premises, so far as the exclusive use of those premises is concerned. The Commission might lease a privilege and give pasturage elsewhere to other people, and in that way put them on equal terms, but they have not done it.

Q. It is not very likely they will do it? A. No; because there is an objection to fencing in these tracts.

Q. I am trying to get at the force it puts those gentlemen in possession of, virtually excluding competition on equal terms? A. No; I don't think

it does. I say the only territory leased to saddle train men is leased to Coffman & Kenney. To that extent other people are shut out; but the Commission is not bound to Coffman & Kenney not to lease to other parties other privileges. It is not likely the Commission will lease any territory to any other parties for that business, for the reason that there is not any other that we could lease now and keep the public satisfied.

Q. And for the additional reason that even admitting that the Commissioners are disposed to do so, it is not at all probable that they would inclose and make other preparations there for another lessee, placing him upon an equal footing with the others? A. No; we would not do it, because I think the Commission itself—a majority of the Commission—to-day are opposed to half the fences in the valley. More than half the fences were built before the present Commissioners were in office. I think the majority of the Commission to-day are in favor of removing fully half the fences in the valley.

Q. Do you think it at all probable, if an outsider were to come in there to take a lease of the bare privilege of running a saddle train there, that they could get a lease of that kind if they added to it the condition that they were to have equal privileges with Coffman & Kenney in some other parts of the valley by an inclosure? A. No; they could not, on the ground that the Commission would not encourage the inclosure; that is my opinion, of course.

Q. They are virtually excluded, so far as the operation of those leases is concerned, and the condition of the valley? A. No; that is only my opinion as to what the Commission would do. I have no right to speak for them.

Q. I am speaking of the operation? A. You asked me whether it is likely the Commission would do this thing. I said: "No; that is a matter of opinion." I don't think they would, but they might do it, and then they would put them on an equal footing with Coffman & Kenney. So far as I am concerned, I would not consent to it, and I don't believe the majority of the Commission would. Then, if I am correct in my opinion on that subject, then virtually nobody could come in there and be placed on the same footing as Coffman & Kenney, of course, because we would not close up other land, and give it to somebody else.

MR. HUTCHINGS: Suppose, for instance, that I applied to the Board of Commissioners to run a saddle train, and I gave bonds for carrying out and performing everything that I did, and I would put up a building at my own expense; such a building as would have taste in it—that is, show good architectural taste, and I kept all my animals up in the stable. Would I get that privilege, do you think, of competing with Coffman & Kenney? A. I think you would get it. I will tell you there is one thing that I don't believe the Commission would permit. I don't believe they would permit you to put up a building yourself, for the reason that the Commission have come to the conclusion that they would not permit private individuals to put up buildings. In nearly every case where it has occurred, those individuals, no matter what they have said in regard to it before they would put up a building, have claimed pay for the building, whether it was any account or not when they got through with it, or when their lease expired.

MR. TULLY: Have they not put up buildings—the State holding a right—have they not put them up for Coffman & Kenney? A. They have, and for both stage companies; and for this reason—

Q. Taking Mr. Hutchings' proposition as he states it, with the exception that he was to ask them to put up the building, reserving the right of the

State in the building, and he taking it as a lessee; do you think they would allow him to do it? A. I think they would, if he could satisfy the Commissioners that he would not claim anything for the building afterwards. That has been the great difficulty. People have put up buildings there and have agreed at the expiration of the lease to claim nothing; that the building should revert to the State; but whenever the lease is up, they always want something for it, and they come around growling about it and claiming that they ought to be paid.

Q. You say they are gradually adopting a one year system? A. Yes, sir.

Q. In Mr. Hutchings' hypothetical case, the fact of not having any guarantee that he would get it for a second term would operate—knowing that he had to deliver that up, it would deter him from putting up a building on his own account, would it not—the tenure by which he would hold it being so uncertain? A. Yes, sir; it might deter him from doing it. I hardly think a man would put up a building with no assurance of more than one year; such a building as he would require.

MR. HILL: I offered to do that.

THE WITNESS: Yes; Mr. Hill did, in respect to a studio.

MR. HILL: To put \$1,000 in it and present it to the State, and I would lease it by the year.

THE WITNESS: Mr. Robinson also offered to put up a studio and convey it to the State, in any way the State required, and then take a lease of it.

MR. TULLY: This was to make a legal document to protect the State against a disposition to hold over? A. I only mentioned that in my answer to Mr. Hutchings, because it occurred to me at that moment, but it affects a good many of these questions that are being asked.

Q. As a legal proposition there would be no danger on the part of the State? A. As a legal proposition that could be provided for. The difficulty in the case that Mr. Hutchings has spoken of would be that the applicant would be unwilling to make the application unless he could be assured of retaining the privilege for a term of years.

MR. TRUMAN: Did Mr. Hutchings mean to come in any time and make this proposition, or at the annual meeting in June?

MR. HUTCHINGS: It was merely upon the principle whether I could do it at any time; of course, at the suitable time.

MR. TRUMAN: You could not do it, of course. They only meet once a year, in June, by law. They go up there, and are paid their traveling expenses. Then, if Mr. Hutchings at the annual meeting should put in an application saying that he would like to build a house, and make a deed at the end of the time, I think that his bid would be better than Coffman & Kenney's, and he would get it.

MR. TULLY: It would not be necessary to make a deed at the time.

MR. TRUMAN: A promise legally that the State should get it.

MR. TULLY: In other words, the house belongs to the State as soon as he puts it up?

MR. TRUMAN: Yes, sir. It is the determination of the Commission—they have been gradually getting at it for six or eight years, and I know all future Commissions will abide by it—to hereafter let no human being put up a house and own it himself. But no one can come in after they have granted a privilege, between one June and another, no matter if he would run free, you know. But the man who puts in the best bid in June, all things considered, is going to get the bid. I think it runs that way; it did last June.

THE WITNESS: I have a different view from Major Truman in that. We

don't obligate ourselves, in accepting any bid, to restrain ourselves to that bid.

MR. TRUMAN: I say, all things considered.

THE WITNESS: We may accept two bids; we may let to two men if we choose. Of course, in the case of the Stoneman House, that business is of a character that we could not let to two.

MR. TULLOCH: Major, if anybody was to make a higher bid than Coffman & Kenney, would not the Commission consider that Coffman & Kenney had equitable rights? In case a party had put in a higher bid than Coffman & Kenney, wouldn't the Commissioners have refused it on the ground that Coffman & Kenney had equitable rights, as in the case of the application of Sprague, where Leidig had the place?

MR. TRUMAN: I don't think so generally; I think possibly there might be such a thing; I don't think so generally.

MR. TULLY: I think the question would be this, in letting that lease to a person other than Coffman & Kenney, would they take into consideration Coffman & Kenney's equities? That is, that they have expended money and got teams and everything there, and been on the ground and gone to a considerable expense in anticipation of a long term, whether they would not take that into consideration in determining whether or not they would accept the other bid?

MR. TRUMAN: That is, after their lease expired?

MR. TULLY: Yes, sir.

MR. TRUMAN: Well, I think they would take it under consideration; I don't know whether they would or not, other things equal.

Q. Other things equal, you think they would give him the preference?

MR. TRUMAN: Well, I am rather inclined to think they would. I would not say Coffman & Kenney, but any party under the same circumstances. Yes, sir; I would from a standpoint of business.

MR. HUTCHINGS: The point I want to make is this: would I, as an individual, be allowed to put in a bid, just for a stable, or a permit, without reference to Coffman & Kenney, or anybody else; a bid as against another bid. I mean, as a competing interest; that there should be two to compete for the travel. That is the point I want to make?

MR. TRUMAN: In June, you mean, of course?

MR. HUTCHINGS: At the regular meeting, of course.

MR. TRUMAN: I think you would; but I think the Commission would see to it that there were provisions made that there would be no pooling between the two; between you and Coffman & Kenney, or any selling out between you and Coffman & Kenney. I think there would be provisions made. But if there were two men and those provisions could be made, I am rather inclined to think that they would let two men in that important business, because it is a big business, and I think two men could live in it. But, still, I don't know as others would think that way. I have no doubt about that, however, in the world; that if a man should put in another bid, or, I would say, that two men asked for the privilege, and they could prove that they could make provisions that there was no pooling or selling out, that they would do it.

MR. TULLY: The next charge is, "The reduction of rentals to the prejudice of the State's income?" A. There are only two things that that can refer to: that is reducing Mr. Robinson's rental for the building occupied by him as a studio from \$20 to \$1 a year, and the other is a reduction of Coffman & Kenney's rental \$250, I think. Now, in regard to that—the reason that was done was this: Coffman & Kenney appeared before the Commission at its last meeting and stated that their crop was practically

a failure; there was nothing grown there; it didn't promise to be of any value, and the building on the place, of course, in bidding for it, in paying this rent, they were paying for the use of the building, as well as other things: that those buildings had been consumed by fire and some feed destroyed in the buildings; that they had lost all those things, and that they were not responsible for any of those things. They represented, in other words, that the privilege had not been of that value to them. Of course, that might be considered bad luck. One of the Commissioners took the ground that that was one of the chances of trade, and that the Commissioners should not interfere in the matter because a man had lost in a matter of that kind. But other Commissioners said, "We are not running this valley to make money out of it, but we are managing it for the best interests of the State; and if these people have been doing good service, and have lost, without their own fault, the production of that farm, which they had a reasonable right to expect when they made this bid, and have lost the use and benefit of these buildings, which they had a right to expect to use throughout the year or the term, we ought to take it into consideration as a matter of equity." And we did—the majority did—and reduced it. That charge must refer to that matter. That was done because the buildings that they leased were burned up, and they didn't have the use of them for a year; and for the further reason that the crop was a failure.

Q. Do you think it was a part of the duties of the Commissioners there to take into consideration—of course, if he lost something on that, it would reduce his profits on his contract—do you think the Commissioners considered it their duty to take into consideration the fact that he would, without this reduction, be liable to lose some money? A. We don't look at it in that way, as a question of profit to them; we looked at it as what the thing was worth; whether an accident had destroyed the value of the privilege or not. And inasmuch as an accident had destroyed the value of the privilege, we considered, representing the State and the government itself, that we were big enough to make that much reparation.

Q. Is it or is it not true that Harris offered to pay some \$1,700 for the same privilege, or even lesser privileges, as I understand it, than Coffman & Kenney got? A. At the last meeting?

Q. At the time Harris lost his rights there, and was superseded by Coffman & Kenney? A. Well, I don't know. Harris was a disturbing element in the Yosemite Valley the last two or three years he was there. He made a good deal of trouble. I don't know what for. To my face, he was very friendly, always. Of course, this thing was done about the time I went on the Commission. But the most of the trouble he had with the Commission he had before I was a member. He seemed to have trouble with Dennison a good deal; and he had trouble with May; but I always thought that he and Dr. May were the warmest kind of friends, ready to hug each other every time they met. But, when they were not together, Harris was always denouncing May as the breeding spot of all his troubles. Harris was a personal friend of mine. I did business for him as an attorney in Mariposa. He had consulted me. I always liked him and liked the members of his family. But the last year or two he was there he seemed to be making a good deal of trouble, and was constantly growling and kicking about first one thing and another; gave the Commissioners a great deal of trouble; and I think the Commissioners were anxious to get rid of him for that reason; they didn't want him there. Besides that, the campers were continually complaining about him. There were complaints made to the Commissioners that he bought a lot of hay from some man and took the tags

off the bales, and put new tags on, with fifty and a hundred pounds added to the weight. One man that was employed by him there, testified that Harris made him go out and bale hay in the morning after it had rained during the night, or while the dew was fresh, at daybreak, and bale the hay there, and only sell hay to campers at certain times; they had to come and get it at that time or not get it at all. These are a few of the things that he was charged with having done. They were a few of the reasons that prompted the members of the Commission to get rid of him, so far as that farm was concerned. I know that a great many campers came away from there and spoke very highly of Harris and his family; a great many. But there were a great many complaints of this nature. I was not on the Commission at the time these things were coming to a crisis, and consequently I didn't investigate these charges, but I am telling you what the reports were.

Q. Do you or do you not know that Harris did put in a bid of that character as against Coffman & Kenney, and that his bid was refused, and the five hundred and odd dollar bid of Coffman & Kenney was accepted? A. No; Mr. Harris put in a bid for the farm at the time that it was let to Coffman & Kenney; it was leased to them, but he put in a bid for \$450. Now, he might at that time have put in a bid for the saddle train privilege, which in the aggregate would have made his bid reach the figures you have mentioned. That may have been done, but I am not prepared to say. These bids were separate, you understand. I know that he put in a bid for the ranch at \$450, the same figure he had it for for the year before, and possibly the same figure he had it for for several years; and Coffman & Kenney bid \$550, and the ranch was given to them; and as to what the amount bid by him for the saddle train privilege was I don't know. I don't know whether it was as much as Coffman & Kenney bid or not. I think their bid was \$1,200 a year.

Q. Those are the only instances you know of reduction of rentals? A. Well, I don't know that I can say that. I have heard it said that there were deductions made to Cook when he had the old Cook house, and deductions made to Barnard; reports to that effect, because of certain repairs they had made on the buildings and so forth. But those things came to me merely as reports before my identification with the Board as a member. The two reductions are the only ones I know of personally.

Q. The next charge is: "Failure to recognize their own contracts?" A. I don't know; there is that Anderson case, which I explained. Anderson took the contract to build the trail for \$1,500, and spent all the money; was paid all that money by the Commissioners. Then Dr. Briggs, who was Secretary of the Commission, wrote to him and told him to go ahead with the work and the Guardian would furnish him supplies, and mentioned, as I said before, in the letter, "Your compensation is left to the executive committee." Anderson went on and worked two hundred and twenty-two days, and they never paid him.

Q. You know of no other instance? A. Well, that may allude to these workmen, and I will explain that to you. In 1887, at the June meeting, when I first went on the Commission, the workmen, some of them, were friends of mine; some young fellows that had lived in the county there and knew me well, and other friendly workmen. They told me that the Guardian, Mr. Dennison, worked them from daybreak until sundown, and that they worked ten hours and eleven hours; and I told them that they could not be required to work by the day or month any such hours, as they were working for the State; that that was forbidden. Eight hours was a day's work. I brought the matter up by motion or resolution to the atten-

tion of the Commission, and we directed the Guardian not to work the men over eight hours a day, unless there was a contract made that they should receive so much per hour instead of so much per day. And upon my motion or upon a resolution I offered, he was ordered to compute the time that each of these men had worked over the eight hours a day from the time that each had commenced to work and present it to the Secretary or to send it to the Secretary of the executive committee, that these laborers should be paid for that extra time. That was done at the June meeting, 1887. At the June meeting in 1888, the workmen called me aside one evening, as some of them testified here, and told me that it had not been paid; and I brought the matter up again, but it was explained to me that they did not have funds available; in view of other contracts that they had, they had not had funds available; they couldn't pay it for that reason, but that it would be arranged, and the Commission again indorsed it, and I don't know why it has not been paid.

Q. You know that it has not been paid? A. I don't know that it has not been paid.

MR. TRUMAN: It has not been paid.

THE WITNESS: I know that one of those workmen was here and swore that he had not been paid, and he had his account; but I know it has been ordered paid at two sessions of the Commission.

MR. TULLY: It is in evidence that at one time Anderson had a contract for building a bridge, and worked a number of days there—I don't know how long; don't recollect—and got out some timbers; and that the contract for building that bridge was subsequently let—it was determined to build an iron bridge—and the contract was let to some other person, and the Commission refused to pay Anderson for the timbers he had gotten out on that contract? A. Well, sir, that was before my connection with the Commission, and I know nothing whatever about it; and to tell you the truth, I never heard anything about it before to-night. I have heard that charge read several times, but never heard its meaning explained before. That occurred long before I had anything to do with the Commission, and I don't know a thing about it. I will state that George Anderson, when he came to consult me, never said that he had any claim against the Commission of that kind. He never mentioned any such thing to me.

MR. KELLY: He addressed a long letter to the Commission about it? A. I don't know; if he did, it was long before my time.

MR. TULLY: The letter is in evidence, asking that he be compensated for the work, and they refused to do it, and that subsequently he worked a small portion of the timber he had gotten out to a suitable length and size, and the bridge contractors allowed him something for the timbers he got out, but the Commissioners paid him nothing. He complained to the Commissioners in a long letter and asked compensation; complaining and asking their reason why he should not be paid for the losses he had sustained. A. George Anderson was dead more than two years before I became a Commissioner, and hence I know nothing about that.

Q. The tenth charge is: "Withholding from citizens facts concerning the acceptance of the Stoneman House by the State and illegally leasing the same." A. That involves two things. In regard to one of those charges or one part of that charge, rather, I know nothing at all, because a sub-committee went up to receive the hotel. We met in June, and the hotel, we were told by the contractor, would be completed at a certain date in the fall, or about a certain date, and that he would communicate, and of course there was a sub-committee appointed at that time to go and receive the hotel. That committee was then, I believe, authorized to invite as

many of the Commissioners as they desired, and that sub-committee proceeded to invite the whole Commission to go. I intended to go, but was attending to a law suit which took up my time, and I couldn't go at the time, and I understood afterwards that the Governor went; that Mr. Madden, one of the Committee on Buildings, went; Mr. Chapman went, and that Mr. Griffith went. Some friend of Mr. Griffith's was the architect who furnished the plans for the building; that he went. As to what they did when they went up there, I don't know anything.

Q. You don't know any of the particulars of the leasing? A. No, no; I am not talking about the leasing; I am talking about the receiving from the contractors—the turning over of the property; that I know nothing about. As to the leasing of the hotel, I was there and participated in everything that was done. That was at San Francisco. And now I will state to you what I know in regard to that matter. Bids had been published, or at least a call for bids had been published in the "Bulletin" of San Francisco, and when we opened the bids in San Francisco there was a letter in my possession; there was a letter in my possession when the bids were opened, from Judge Grant, who testified before you, I believe, in which he stated that he did not wish his bid considered at all; that he wanted the Stoneman House leased to Mr. Tyack and his wife. Mrs. Tyack had been the house-keeper and general manager of Grant's hotel at Grant's Springs, on the Yosemite road, and she was a very excellent manager of a hotel. Mr. Grant in his letter said he did not wish his bid considered at all. Tyack and his wife were present with a bid. I think their bid was lower than Grant's. Now we opened the bids. There was a bid from Mr. Choynski, from Tyack and wife, from Grant, and from J. J. Cook, and that was all. My memory is not powerful enough to recite to you the details of each bid, but this struck the Commission: that these people had not been informed fully of the kind and the probable cost of the furniture that the Commission would require to be put into this building; they had not been informed, when they prepared these first bids, in regard to the privileges that would be attached to the hotel—necessary privileges, such as the Lemmon garden, orchard; it was adjacent and it was necessary to be attached; the store privilege and bar privilege; a billiard-room privilege had not been referred to in the advertisement; the advertisement, in fact, had been defective; the bids varied in their terms; they were not uniform. Now I will say this, to illustrate and not to recite the details of any bid: one bid would have a condition in it which we had not called for, and another one would have some other privilege in it. Each person who bid put in a bid for what he wanted and with his own ideas governing, so there was some difference in every bid. When they came to be compared they were not uniform; they were not bids for the same thing, in other words; and we said at once, "Well, this won't do; these people have not bid for one thing." We told the applicants about these defects in their bids. "Now," we said, "hold on; we will make out something that is clear to you, so that each one of you can bid upon the same proposition without any surroundings or attachments." And then we proceeded to try to agree upon something.

We concluded, from the report of the expert whom we had investigate the matter, that it would cost from \$10,000 to \$11,000 to furnish the hotel as we wished it furnished, and as we insisted on its being furnished. We then discussed what privileges we would attach. We concluded that we would attach this Lemmon orchard and, in fact, more ground which is adjacent to it, to furnish pasturage for cows, and that we would give a privilege to have a kind of store, with a bar, and also a billiard room, but we didn't want that inside of the hotel; didn't want any barroom inside of the hotel

at all; and so we agreed in that way upon all the things. Now, we came to consider how we would ask these people to bid. We considered that in view of the immense outlay that would be required right at the start to furnish the building, that we would arbitrarily fix the rent for the building itself at the minimum figure fixed in the law. The bill which I introduced and which passed the Legislature, required that the new hotel—after the appropriation of \$40,000, required that it should be leased for not exceeding ten years; that follows the language of the Conness bill, ceding the valley to the State; and at a figure that would produce not less than 3 per cent upon the appropriation; that would be \$1,200. So we fixed that at that figure. Then we made up a list of the privileges which we would attach to the hotel, and the figures which would cover the cost of furnishing. We called these people back then, and we read over to them what additional privileges we would grant. We said to them: "We have agreed to fix the rent of the hotel at \$1,200 a year; we think that is enough, in view of the fact that the furnishing will require \$10,000 or \$11,000 outlay at the start. But now, we intend to lease to the man, whoever is successful, that is, whoever gets the hotel, we will lease to him certain other privileges." And we recited them all carefully, and gave each party who wanted to bid, a copy. We said: "Now estimate on this basis and put in a bid." Well, they nearly all of them—I think all of them indicated to us at the outset that they would not bid at all. Cook said: "Well, I don't think I will put in a bid." Choynski the same, and it looked like we were going to have no bids at all. Of course Judge Grant was not there to be consulted. He could not be told about these new conditions; but the rest were, and he had written virtually withdrawing from competition in the matter. He was no longer considered as a competitor for the hotel, because he had written expressing a desire that his bid should be ignored, and that Tyack and wife should have it. We gave them until next day. They put in their bids again, but reluctantly, and Cook bid higher than the others for the attendant privileges. You see, after we explained all the things that we would require of the man who got it, including cost of furniture, etc., they were not so anxious to get it as they were before; and so they bid with some reluctance. Mr. Cook was the highest, and we gave it to him. There was opposition in the Commission to giving it to Cook, and I was one of the parties who was opposed to giving it to Cook, on this principle: That Cook was understood to be an owner in one of the stage lines running to the valley; and I stated to other members of the Commission that I believed it to be bad policy to lease a hotel in the Yosemite to a man who was represented to be an owner in one of the stage lines. All these men came well backed, well recommended. Judge Grant, in his letter, stated that he would furnish any amount of bonds required for Tyack, and see him through on the enterprise. Mr. Kreling, of San Francisco, who was Tax Collector, I believe, at that time, came to me personally, and also came before the Commission, and assured us that he would back Choynski in money and bonds, all that was required; and so did Mr. Cook furnish assurances. So far as that was concerned, there was no difference between the men. When it came though to opening the bids, Mr. Cook had overbid the other parties, and we gave it to him. The other parties all expressed themselves as rather glad to get out of it, at that time; and Mr. Choynski, particularly; and it amazes me that he had changed his mind so much in the last twelve months, the last year or so.

Q. Right there let me ask you a question. You have already said that so far as bonds and guarantee for the faithfully carrying out of their bids,

you say they were all on an equality? A. Yes, sir; they were all well backed.

Q. Was there any objection urged against Choynski that tended to influence the minds of the Commission? A. Yes, sir; somebody—I don't know who it was; some member of the Commission; one of the San Francisco members—said that from what they could learn, he was not a man that was fit to run; that is, that he had not made a success in the hotel business; that he had not run, and was not capable of running, a first class house. It was some San Francisco member who said that he learned that from inquiry there among his friends. That much was stated.

Q. Didn't this man who objected to him predicate his objections to Mr. Choynski upon information supposed to have been derived through this star chamber down there that is called "Bradstreet's Mercantile Agency?" A. Well, I don't remember. Things of that kind frequently come up.

Q. Did you hear anything of that kind yourself? A. I don't remember. I know this: I have a clear memory that something was said by some of the San Francisco members against Choynski's standing. I think, as a hotel man, that people who knew of him said that he was not capable of running a first class hotel; but I don't know whether that cut any figure in the result or not. There is one thing I want to say about Mr. Choynski. When he was before the Senate committee here—I didn't hear his testimony before your committee—but when he was before the Senate committee he said, and evidently with the intention of throwing some odium indirectly on the Commissioners, or on some of the Commissioners, he said that he met and was introduced to a man in San Francisco at that time. He says: "I believe I was introduced to him by Senator Goucher, at the Lick House." Those were his words. I asked him who the man was. The "Examiner" stated that I did not cross-examine him; stated that editorially, but that was false, I did ask him at the time—interrupted right there—and asked him if he remembered the name of the party, and he said he did not; and I asked him if it was Brown, and he said he didn't know.

MR. KELLY: The name was mentioned between you and him and agreed that it was Brown? A. I asked him if it was Brown, and he said that he didn't know, or something to that effect; but I said it was Brown. That was my statement. But I asked him for a purpose. Here comes the point of the thing: He said that this party was an applicant for the purpose of putting gas into the hotel; that is, these gas machines to make gas for the building, and that this party, in an interview with him, stated to him or asked him why he did not use money with the Commissioners, the same as Mr. Cook did, or words to that effect; and I forget what Choynski stated to be his reply; and that this man said, "Well, I know how and when and where, and what amount to use," rather persuasively, indicating that he was competent to manage anything of that kind. Well, while Choynski did not swear positively that I was the party who introduced him, I am satisfied that I was the party introducing the man he mentioned; and I want to state to the Commission who he is, in order that, if they desire, he may come before the committee. The only man who appeared there during the time that these matters of leasing the hotel were under consideration, in the guise of an applicant for the privilege to furnish these gas machines, was a friend of Mr. Rundell's, from Hornitos. His name is Jerome B. Brown. You know him, Mr. Rundell, very well. He has been a neighbor of yours many years. Now, he came to me, Mr. Brown did, and stated that he wanted to put these gas machines in, and told me that he had a sort of an agency for the machine, a certain kind of machines,

and that he wanted to get it done. I told him I didn't know what the policy of the Commission would be; whether they would do it or let the man who leased the hotel do it. So we talked among the Commissioners, and they said they would let the lessee do that if he wanted to do it. Then of course Brown wanted to know who the lessees were, and wanted to get acquainted with them. I don't remember positively whether I introduced Brown to Choynski or not, but presume I did.

THE CHAIRMAN: You thought it was safe to copper anything Brown stated? A. No; I am not testifying on that subject at all. I don't know what Brown said to Choynski, or whether either has told a falsehood, or both; but I suggest to the committee, if you want to find out whether Choynski is a truthful man or not, that you send for Brown. His name is Jerome B. Brown, and he lives in Hornitos, in Mariposa County, where Mr. Rundell lives. But I have known Brown so long that I am satisfied that he never made any such statement to Choynski. He is not a man of that kind, so far as I know him. It is a matter I know nothing about. I mentioned it here because I thought perhaps Choynski had made that statement before this committee. If he did, I wanted you to know who the party was. It don't affect me; it don't affect me personally in any degree at all; but of course if I had known that there would have been such testimony, I should have asked the Senate committee to send for Brown in the first place.

MR. TULLY: I don't know that it is material. It is a question of veracity between the two? A. Well, I don't know whether Brown said it or not. I say I would like to know if he did, and that is the reason I would like to have him here. I didn't hear his testimony, and I thought probably he had mentioned it, and I wanted to put that in a proper light; give you the name and address of the party. If there was anything of that kind going on I don't know it.

Q. Is that about the amount of what you know of the letting of the Stoneman House? A. That is all I know. We let it to the highest bidder, Mr. Cook.

Q. How about the illegality clause here? A. Illegally letting it?

Q. Yes? A. Does that apply to the letting or receiving?

Q. It says: "Withholding from citizens facts concerning the acceptance of the Stoneman House by the State, and illegally leasing the same." A. It was not illegally done at all. You gentlemen can take the Act providing for the construction of the hotel, and there is nothing in there that has been violated.

Q. You acted in accordance with the requirements of the law? A. Yes, sir. There is a clause in that bill which you, as a lawyer, will know to be useless as soon as you read it, because it is not referred to in the title. It was amended in a silly manner in the Senate. There was another law providing against exclusive privileges, and it was not necessary to put it into that bill. That bill simply provides for the appropriation of money to construct a hotel in the Yosemite Valley, and away down in the bill, somewhere, somebody in the Senate put a clause in it like this: "No exclusive privilege in the hotel business shall be allowed." That is provided for elsewhere, and had no right to be in that bill. But there is no provision in that bill saying how we shall let it. We shall let it for a minimum of three per cent on the cost, and that is the only restriction there is. Without even publishing an advertisement, we might have gone to a man—it would have been bad policy, but we might have gone to a man—and said: "We will lease this to you for \$1,500 a year."

Q. The illegality or legality are conclusions of law? A. Yes, sir; I hate

to testify about the law. There is no law, that is, there is no statute violated. I think we leased it to the best advantage, myself. There was a whole lot of people wanted to lease the hotel.

Q. Here is a very grave charge, and I want you to give it your careful attention: "Rendering useless the district school of Yosemite Valley." A. There was no such thing done. That is absurd. We could not control Leidig's going out, and there was nothing incumbent upon the Commission to compel us to have a factory in there. Leidig's folks went out, as I tell you, of their own volition, and there was nobody in the country sorer than I and my friends, and my relatives, and I believe the whole Commission; well, there might have been one or two Commissioners, but it was a source of regret to all; and they went out of their own accord. They were the pets of the Commission, in my opinion, the Leidig family.

Q. How many school children did the Leidig's take out with them? A. I have stayed in their house every time I went to the valley, but I can't remember; let me see, I think they took out about five that would draw school money.

Q. Do you know how many Harris took out with him? A. No; I was not so well acquainted with Harris' family, but he must have taken four or five.

Q. Did that school close up on account of the absence of those children? A. No, sir; it did not. When the Commission was in session last year there was a teacher there; the school was running. Both of these families were out of the valley at that time. I know the young lady who taught the school at that time very well. I heard nothing about it. We made an arrangement there to build a new school house at the last meeting, reported in favor of building it; there was an application from the Trustees. I understand the number of children who draw school money in the school district aggregated over twenty, and of course it may be true that some of those children live so far from the school that they could not attend school; but the district would draw its school money, enough to sustain it.

Q. Do you think that district is likely to prove an exception to the general rule in California, so far as furnishing children for schools is concerned? A. There are few families in Yosemite. It is not the policy of the Commission to encourage settlement there; there has been an objection to that all the time; but I know that there is a prospect there for an increase in the population; there are families there that are bound to increase in the natural course of events.

Q. I will ask if there is anything in the law imposing a duty upon you that will require you to furnish children for the school? A. No, sir; none that I have discovered. I suppose nearly every season there will be some children in the valley, who do not have a residence there, who will go to school.

Q. That is not the fault of the Commissioners whether they have or not? A. No, sir; we could not control the matter if we tried.

MR. TULLOCH: Was or was not Leidig in a manner compelled to go out by reason of the stages not stopping there? A. No, sir; he never was. There was one year, and that was before I was a Commissioner—I don't know how many years ago—that I heard—it was rumored through the country that stages—Leidig since has told me that on a few trips the stages did not stop at his hotel: but as soon as it was brought to the attention of the Commission, the stage companies were compelled to stop, and after that always did, and there was no obstacle thrown in the way; and the fact of the business is the stage drivers themselves liked Leidig's better than they did the other places. The stage drivers, when they would put

their stages up at the upper end of the valley, would go down and spend their evenings at Leidig's house; they were fond of doing it. Mrs. Leidig was an exceptionally popular lady, and the drivers had no disposition to do this, and the Commissioners would not permit the stage companies to do anything of the kind, and it was promptly stopped. Leidig may have had cause to complain of that a few times, one or two years ago, but it was stopped as soon as it was brought to the attention of the Commissioners. Of course it is a little outside of the range of your question, but I say the stage drivers, the people on both lines, the majority of them, were very warm in their friendship of the Leidig family.

MR. TULLY: The next question is with regard to the "Neglect of public roads and trails within the grant." A. There has never been any neglect of the public trails and roads within the grant. I say this: that the roads and trails in Yosemite Valley for the last two years have been in as good condition as they possibly could be in. I don't believe that there is any unprejudiced man in California, or anywhere else, who will go over those roads and trails—who was over those roads and trails last year or the year before—who will pronounce them in bad condition or neglected. On the other hand, they are in exceptionally fine condition.

Q. Are there not in some of those trails going up to the mountains, cuts that have been made—water-ways—to prevent the water running down and cutting and washing out the gullies? A. There are little outlets of that kind, necessarily, but they do not interfere with travel. In fact, they are a necessity, and the trails and roads are in fine condition. Who made these charges, Mr. Robinson?

Q. They are sworn to by Mr. Robinson. A. Well, Mr. Robinson is away off on that. There is no defense for any such charge as that; no defense for the charge having been made, I mean.

Q. Have you been over those trails lately? A. Yes, sir; I have; not lately.

Q. I mean during the last year? A. Yes, sir; during the season, last year and year before.

Q. What was the condition of the roads in the valley with regard to dust and chuck-holes? A. Well, of course, there is some dust; that is unavoidable. We cannot sprinkle the roads. There is a good deal of travel; the stages come in there and go out every day, two lines, and there are places, of course, where the roads are dusty; that is unavoidable. These trails, too, get dusty in some places, over some kinds of rock and some kinds of soil. The tramping of horses' feet will make some dust; that is unavoidable. There would only be one way to avoid it, and that would be to have them sprinkled a couple of times a day, and we can't afford that; we have no means to do it with. I think there has been no complaint about the roads being dusty. I notice in front of Barnard's hotel there is a circular rack for horses to be tied to. The saddle train men, when they have orders from tourists for horses, bring down a drove and tie them at those racks. Sometimes they have to wait on the parties they are to take out three quarters of an hour or sometimes an hour, and there are stages driving in and turning there. That makes quite a dusty place. Mr. Mills I heard mention that before one of the committees. It is true there are dusty places that way, and it seems unavoidable. The Yosemite Commission has never been granted money enough by the State to keep roads sprinkled, although it could be very cheaply done; I mean on the roads in the valley. It would require a couple of horses and the services of one man. Water could be very easily obtained. Of course, the roads around where the buildings are could be kept sprinkled.

Q. Don't you think it would be advisable to incur that additional expense, and put those roads in good repair, say in the winter and the early spring, when they are damp and can be made solid and firm, and then by a judicious employment of water sprinkle them, and keep that dust down? A. Well, I will say this—that they are kept in good repair. All that is done except the sprinkling, and that sprinkling is not required in the early part of the season. The snow has just gone off, and there are little rivulets running down over the road, and it is kept pretty moist. There is not much dust until along towards midsummer, June; in some places, it begins to get dusty.

Q. Do you think that would be advisable? A. Yes, sir; I think it would be very good. I think it would be a good thing.

Q. You don't think it would be a very expensive operation, either? A. Yes; it would involve the purchase of a span of animals for that use alone, and the employment of one man for that purpose alone.

Q. For a short period? A. Yes, sir; for about three or four months. There would be no way to keep the trails from getting dusty, and you never hear any complaint of it. People who go riding up and down those trails don't wear their best clothes on those trails, anyway. They don't expect to get the enjoyment of it without getting a little dust on them.

Q. In traveling over those trails where those waterways are made for the purpose of preventing the water from running down in a continuous stream, did it not suggest itself to your mind that if little culverts were put over those trails, and those trails kept in such condition that the water running down after the melting of the snow should run through those culverts, that that would be much more preferable than digging ditches and putting poles in them? A. It never occurred to me, because I never saw where there was any cut that amounted to anything; that was dangerous, or anything of that sort.

Q. Are you in the habit of traveling a good deal over the mountains? A. Oh, yes.

Q. If you are like most men that travel over the mountains, you would not notice many places that a man who is accustomed to traveling on good roads would notice? A. Well, I have been on some good roads, but I would hardly expect to find as good roads there, up and down those perpendicular cliffs, as I would in a level country. I think that this examination, if it were practicable—it is no use to talk about that—ought to have been made in the summer time, and the committee have gone up to the valley.

MR. TULLY: That is my opinion, too.

THE WITNESS: It would be a great benefit to the State to have an official report, based upon a personal investigation by the committee. Much of this I think you would discover to be unworthy of notice, and where there are things of consequence you would be better able to make recommendations than you will here by hearing a lot of conflicting testimony. My own opinion is that the trails and roads are in the best possible condition now.

MR. HUTCHINGS: Might I ask the Senator if he went up the Clouds Rest trail last summer? A. I never went up the Clouds Rest.

MR. HUTCHINGS: Up beyond Snow's? A. I will tell you what trip I took. I took what they call the round trip. That goes up by Snow's and crosses up above Nevada Falls, and goes around and eventually comes out at McCauley's, and then down on the Glacier Point trail.

Q. Didn't you notice in that trail very deep steps, say a foot down, where there were rocks running across beyond Snow's, between there and the top

of the Nevada Falls? A. Yes, sir. There is a space there that is bad. There is some of that trail that is rough. It is a trail that has been discouraged, for various reasons. I will state that what they call the round trip has been discouraged by the Commission, owing to the fact that while lots of people like to take it before they have taken it, nobody wants to repeat it. Now, the crowd I was with consisted of three or four Commissioners and some other parties; I think in all about fifteen or sixteen, a few of them ladies; and the trip is too long and too tiresome, too hard for a party of pleasure seekers to take; and generally when a party goes on that trip they come back and they will tell all the rest of the tourists, "Don't take that trip."

MR. TULLY: Don't you think it is a little dangerous for ladies, for instance, who are not accustomed to ride on animals of which they know nothing, coming down a steep hill, that there are poles, for instance, where the animal will have to step down eight or ten or twelve inches at a step, and probably have to step at the same time over a pole that is laid across the road? Don't you think that is dangerous? A. Stated in the way you state it, it looks as though it would be dangerous; and if I had not been over these trails, and seen the way the horses act on them, and if I did not know that no accident had occurred, I would say, in answer to the question in the abstract, that it would be dangerous. But the horses used there seem to be specially fitted in that way, and they do not cause accidents. I think it is dangerous to ride on a trail, no matter how smooth it is, where I can look down two or three thousand feet, and I would not do it, although my wife rode behind me, and she did, and other ladies did; but I got off and walked. Personally I am afraid to stay on a horse when I am going down the Glacier Point trail. I would not stay on a horse for all that Coffman & Kenney's whole crowd of horses are worth, because it looks to me in many places like the stumbling of a horse would send a person thousands of feet, and I prefer to walk.

MR. HUTCHINGS: I would like to ask the Senator if he walked from Barnard's hotel up to Cook's at any time during last summer? A. From Barnard's to the Stoneman House?

Q. Yes? A. I walked up and down there a great number of times during the time the Commission was in, and that other time in August when I was there, I walked up and down; made two or three trips up and down in the evening, and after night.

Q. Don't you think that is a dusty walk? A. Yes, sir; in August that was pretty dusty; I walked it.

Q. This was in June that I referred to. A. I think it was dusty in June, portions of it.

Q. But yet there is no pathway for people to walk up; they must take the dusty road? A. There is a portion of the way. There is a pathway from Barnard's around as far as the school house; a little further than the school house, and there is a similar pathway around by the side of the road where you can avoid walking in the road; but the greater portion of the way there is no path.

Q. There is no dust at that particular part? A. No; there is no dust there although there is a trail there; no, that road is dusty.

Q. Did you ever ride down by the lower iron bridge? A. Yes, sir; often.

Q. And from the lower iron bridge up by the Cathedral Spires? A. Yes, sir.

Q. Beyond the Cathedral Spires, going beyond Leidig's, didn't you find a good deal of dust? A. Yes, sir; there is a good deal of dust along by

Leidig's for a half a mile before arriving at Leidig's, or more; a mile I guess, half a mile anyway. The road is pretty dusty.

MR. HUTCHINGS: I might state before this committee that there is a soil in that valley that will pack, if it is put around, which I have proven in many places. You take that long stretch of several hundred feet across the Ribbon Falls; a stretch of country that is never dusty.

THE WITNESS: That is proved also by the fact that there are sections of the road that never get dusty, and other sections that always get dusty. That can only come from one thing, except from moisture, and in many cases it does not come from moisture; it comes from the soil. There are portions of the valley that will not get dusty, no matter how much travel goes over them; and other portions that will get dusty.

Q. May I ask if you crossed the road over the iron bridge at Barnard's towards Yosemite Falls? A. Yes, sir.

Q. Across the meadow? A. Yes, sir; I was over there a number of times.

Q. Didn't you find that pretty dusty? A. Yes, sir; that road was dusty.

MR. TULLY: Do you think if that soil that packs were carried over and spread judiciously—that those roads, in other words, were graded up with this soil and packed there, that it would put an end to that dust? A. Yes, sir; it would if enough were put on the place. It would cost considerable money to so grade all the roads in the valley.

MR. TRUMAN: That has been done in places? A. Yes, sir; it has been done in some places.

MR. TULLY: "Employment of State labor upon work for private parties?" A. I don't know anything about that. I never heard of that until it was—I believe even the "Examiner" didn't make that charge during the publications that have been alluded to so often. If anything of that kind had been done—of one thing I am sure, it never was done at the order of the Commission. I don't know to what particular thing this refers; but there has been no man directed to do any work for private individuals when in the employ of the State, by the Commission, and the Guardian has never been given any such authority.

Q. I have an idea, not from anything I have heard directly, so far as the evidence is concerned, but from outside parties, I have an idea that it probably alludes to the building of those additional sheds or stables that were put up? A. If it alludes to that, the answer is that those were not put up for private individuals. One of them may be used by Coffman & Kenney to-day, and they may be used by you to-morrow.

Q. They belong to the State? A. They belong to the State. You might as well say, if that was work for private parties, that the contractors, Carle, Croly & Abernethy, who had the contract for putting the building up, were working for private parties.

Q. You know nothing about anything of that kind? A. No, sir; I never heard of that before hearing it in these charges.

Q. "Failure of the Board to properly manage the Yosemite Valley in accordance with the conditions imposed upon the State by the United States?" A. Well, that embraces some of these other charges.

Q. That would apply to the general management? A. I don't think the management has been good since the Commission was first formed. I think the management has been improving for some years.

Q. Especially since you got on? A. No; I don't want to say that. But, honestly, I am of the opinion that the management of the Yosemite Valley is improving. Many of these things that lay at the foundation of these charges preferred here are things that have been removed and stopped

long since. Many of the things complained of, which were probably the cause of some of these charges, have been long since reformed and stopped, and the Commission has been on the road toward reforming many of what I considered the abuses that have grown up there. But as to the management now being perfect, or anything approaching perfect, I refuse to testify to that condition. I don't believe you can pick out any nine men in the world, and put them in charge as a Board of Commissioners to manage Yosemite Valley, and pick out any man in the world as Guardian there, that they will be able to manage it even to their own satisfaction, much less to the satisfaction of outsiders, because among the Commissioners we differ on various things, and the contests there between the Commissioners are sometimes as bitter as any contest over a bill in the Senate or Assembly. We do that on the question of Guardian; we get into rows on the election of Guardian, and there sometimes is a good deal of feeling engendered, because one man thinks Mr. Hutchings is a good man, and another thinks Mr. Dennison ought to be there—he is a good bookkeeper, writes a beautiful hand—and somebody wants another man, and so it goes. When you come to say the Yosemite Commissioners have not managed the valley in pursuance of the conditions imposed by the general government, the question is too broad. I don't believe that I am fit to manage the Yosemite Valley, and yet I think I am as fit as anybody in this room.

Q. You think it is like all other things; it is to some extent experimental; although a man might have been employed on other parks in the world, still Yosemite is a law unto itself? A. Yes, sir.

Q. And when he would come into Yosemite he would find new features that he had never contemplated? A. Yes, sir.

Q. And he would require some experience before he could grasp the entire management of it? A. Yes, sir; and it is like anything else. To manage Yosemite requires that the Commissioners should be educated up. They cannot know at once what is best. They require to become familiar with the valley. I don't mean by that, to become familiar by first starting in and cutting down all the trees there, as has been charged, or by any abuses of a similar character. But gradually I think the management has been getting better. We have gotten rid, on the Yosemite Commission, of some people whose presence there, in my judgment, was not for the best interests of Yosemite. We have been unfortunate, I think, in the choice of a Guardian. I would prefer in expressing these things, that the newspapers should not mention my opinion. I have mentioned it before the Commission, and perhaps I have mentioned it publicly. I think the Commission was unfortunate in having Mr. Dennison as Guardian there. I think he was a theorist and not a practical business man. He was a good bookkeeper. I think his intentions were honest; I don't say anything about his honesty. I think he had bad judgment. I think he was too strict. When he got instructions or directions in regard to a thing from the executive committee, he was too stern and too strict about it; he wanted to carry things out to the very letter, without using any discretion; and perhaps he may have done something that the Commissioners did not mean to authorize him to do.

Q. While we are on this broad question, involving the entire management, I want to ask you a few questions, for the purpose of getting your ideas with regard to some suggestions that have occurred to not only myself but to others in this connection. Do you or do you not believe that the Secretary of the Yosemite Commissioners should be a man outside of the Commission? A. Yes, sir; I always have believed it.

Q. And that he should be salaried? A. Yes, sir; I always have believed it.

Q. And not form a part of the Commission at all? A. Yes, sir.

Q. Do you or do you not believe that the interest of the State would be better subserved by a smaller Commission, and an obligation imposed upon them to reside in the valley, especially during the busy season, when they should be in executive session continually, especially through the busy season, when the most improvements are made, and when the greater part of the business to be transacted by the executive committee would be done; that they should stay permanently there? A. That is a matter I had not thought of; I had not thought of it. It seems to me that virtually puts the whole thing into the hands of the Governor. Mr. Mills has testified here it was in the hands of the Governor, anyhow.

Q. My suggestion reaches beyond the Governor; it goes back to Congress. Whether or not a better system, predicated upon the experience of the past fifteen or twenty years, might not suggest some idea in the management, for which we would necessarily have to apply to Congress to obtain permission to do it, involving radical changes in the present management of it? A. Do you mean, for instance, to take that power away from the Governor altogether and adopt some plan, through, of course, the action of Congress, whereby the Yosemite would be managed by three Commissioners?

Q. I have not stated any number of Commissioners. A. Well, I understood you to say three, at first.

Q. No; I spoke about the executive committee being composed of three. I have not designated any number; I have not suggested even the number. I say the reorganization of the committee upon a different plan, and that plan would involve the necessity of the residence of the executive committee in the valley, and an independent Secretary? A. That could be done without a reorganization. If the Legislature elected to do so, it could provide the salary and executive committee, and require them to reside in the valley, but that would necessitate indirectly a reorganization of the Commission as it at present stands; because the Commission would not do it. I don't believe there is any three on the Commission who would go and live there. They are all interested in other business.

Q. Suppose the Commission were to consist of three, one of whom was to be nominally the Guardian, but the three together would constitute an executive committee, during the busy season at least that those Commissioners should reside there; and make their office a salaried one? A. Well, you could find men to fill that, but I am satisfied the present Commission would not do it; that is, I am satisfied that no three of them would go there to reside, and discharge those duties.

Q. I am simply asking for suggestions. A. Well, I don't believe that it would be any better than it is at present. I think if we had a proper Guardian there, in the Yosemite Valley—and there is a good deal in choosing a proper Guardian, more than perhaps you are aware of—if there is a proper Guardian in Yosemite Valley, that is enough; and I see no fault with the number of the Commission—nine men.

THE CHAIRMAN: While you are on that question, will you give the committee your opinion of the present Guardian; his capability for the position that he occupies? A. I think he is fit. I have heard no complaint of him since he was elected, and we used to hear complaints of his predecessor, by night and by day, from one year's end to the other; but Mr. McCord has been very fortunate, so far as I know, in pleasing the public. I liked Mr. Hutchings, myself, first rate when he was Guardian. I don't know whether

I like him so well now. He was well liked, at least by my people, where I lived, and, so far as I know, was well liked in the valley. I heard no complaint. There were, of course, men on the Commission at that time who had been there a long time, and they had an idea that Yosemite belonged to them. With some of those men Mr. Hutchings did not get along well. I think the only misfortune in respect to choosing a Guardian there was in the case of Mr. Dennison. He didn't give satisfaction to people who lived in the valley, nor to the people who came into the valley, nor to the Commissioners or anybody else. I don't believe he satisfied himself.

Q. He is no longer Guardian? A. No, sir; fortunately he is not. Dennison was a capable business man, and honest, I think—I am sure of it—but some way he always had some row started. There were always complaints coming in. If any complaints have come in against the present Guardian, I have never heard them.

MR. TRUMAN: He is improving every day, too. He is getting to be a very superior man for a very complicated kind of work.

MR. TULLY: There is no doubt in my mind but what the filling of the role of Guardian is a very serious matter, and the men who are capable, by nature and education, to fill that position are very few.

THE WITNESS: It is a harder place to fill than that of Commissioner, by far. The Commissioners merely outline certain things that they want done. It is the way it is done that tells, and a man with poor judgment is very apt to abuse the power given him.

Q. The Guardian is the arm by which they operate on the valley? A. Yes, sir. Here is one thing which, while it guards carefully the public money that is devoted to Yosemite, is somewhat of an incumbrance to the Commission, and I think I am mainly responsible for it. I had an idea, when I was elected to the Assembly, that things were not honestly conducted at Yosemite, and I thought it would be a good idea to have disbursements of money in relation to that made the same as they are in other departments of the State Government, through the State Board of Examiners and through the State Controller's office. Up to that time it had not been done by the Commissioners. They were a sort of independent power. The money that they collected for rents and privileges in the valley they held. They had a Treasurer of their own. When he was ordered to pay out money, he did it. The State Controller didn't have anything to do with it. All that the public knew about that was their general right to inspect their books: but, of course, they reported every two years to the Governor. Now, in that bill which I referred to awhile ago, which Mr. Long, of Tuolumne County, and myself drew, and which was passed, we made it obligatory upon the Commissioners to pay into the State Treasury all moneys received by them from every source, and required that it should be disbursed in the same way that other public moneys are disbursed, with all these checks. Now, of course, in the first place there must be a warrant or an order by our Secretary. First the expenditure must be directed through the executive committee: then the Secretary draws his order; that goes, I believe, to the Board of Examiners, first, with the vouchers: then the Controller's warrant follows, if it is a proper claim, and then the Treasurer of State pays the money out; and in that way there are a great number of checks. I believe Mr. Truman has figured it out, and claims that there are nine checks on every cent that is paid out. Now, I have been blamed by the Commissioners for that. They denounced me immediately after the Legislature adjourned, because—well, Mr. Madden, Mr. Raymond, and others on the Commission said that it made the duties of the Secretary a great deal more arduous than they had been, and that

there was a great deal of roundabout red tape before money could be drawn out. For instance, a man working in Yosemite, when he had completed a month's work and his account was certified to as correct by the Guardian there, that he immediately got his money from the Treasurer of the Commissioners, and now it has to go through all this circumlocution before he gets it.

Q. One of the Commissioners was Treasurer at that time? A. Yes, sir.

Q. The Secretary was also a member of the Commission? A. Yes, sir. Mr. Long and I did that.

MR. TRUMAN: The Secretary and Treasurer are the same; always have been.

THE WITNESS: Mr. Long and I did that because there was complaint about it, and rumors that the money was being diverted from its proper purpose, and so forth, and we did that in order to put the matter under the control of the proper officers of the State. Of course it makes it much more troublesome for the Commissioners to disburse the moneys—pay the workingmen up there; and the workingmen growl about it. They say they are kept out of their moneys sometimes a month or three months longer than they ought to be, when the money is really on hand.

Q. Do you think that system adds any greater protection to the fund? A. Yes, sir; no doubt it does. I think it does, but it has been complained of. I am explaining that. It has been complained of by men working there in the valley. They are hired by the day or by the month, and when they work awhile and quit they want to get their money, and their warrants have to take this roundabout course before they eventually get their money, and they complain about these delays. But the plan was adopted upon the suggestion of Mr. Long and myself. Neither of us were Commissioners and never expected to be, and we thought we would put a guard on the expenditures that would stick; make them be honest, whether they wanted to or not. You had some pictures of an unpleasant character last night. There are some photographs here of buildings in the valley, and some views.

MR. TRUMAN: Some new bridges and some new roads?

THE WITNESS: New bridges, and new roads, and new buildings. I will just put them in. The views, of course, that were presented by Mr. Robinson were picked, doubtless, with special reference to this investigation; these were not taken with special reference to this investigation.

Q. In other words, they were ex parte pictures? A. Yes, sir; I suppose you could call it that. If I had thought that any decision would be reached by an exhibition of that kind, I think I would have caused some photographs to be taken of the most beautiful places. We certainly can show more pretty places than they can bad ones—a thousand to one; I would not fix any proportion. There are some places there that there have been old logs lying down; trees have been swept down and burned.

MR. TULLY: There is one that represented an old dead horse—the one that died in the wilderness—and laid under the wire fence? A. I saw that in the "Examiner;" I don't know anything about that.

Q. You never saw that? A. No.

MR. KELLY: I will ask you whether it would be better for the valley that it would be managed by, say three men, at an adequate salary, to give their whole attention to it? A. Yes, sir; I do, undoubtedly. Any men, I don't care what the number is, whether it is three or nine, who can give their undivided attention to it, and be there while the traveling public are coming in, will manage it better than men who only go there once a year. But under the law the Legislature has not appropriated money enough to pay our traveling expenses to Yosemite once a year for two years.

Q. Doesn't the railroad furnish passes? A. It doesn't to me; I don't know what it does with the others. Mr. Mills, I believe, is in the employ of the railroad company, and has a pass.

MR. TRUMAN: He paid his fare, every man did. I saw them buy their tickets, because they would not dare do any other way; that is, I saw all but one and I blushed when I handed out a paid ticket instead of a pass for the first time.

THE WITNESS: I want to state to the committee that the actual necessary expenses with me is the smallest part of it.

MR. TULLY: It is the contingent expenses? A. That is, what I can really get back from the State, is the least part of my expenses, I mean to say. That brings me to the champagne question. Some of the witnesses testified that when the Commissioners come in there is a big celebration; that is to say, that everybody doing business in the valley puts the best appearance on to the Commissioners, in order to deceive the Commission; the Commission don't see the worst side of the valley; in other words, that we are hauled around the valley in the best teams, and wined and dined. Well, now, that is not true.

Q. Do you put up for your own wines? A. Yes, sir. I have been there under all kinds of circumstances, nearly. I have been in there, when I have been out in the mountains on hunting trips, with my hunting clothes on, and I have been in there as a candidate for office; they are not likely to spare a candidate for office; I have been in there on pleasure trips; been in there on legal business; been in there as a Commissioner.

Q. Are those people allowed to vote? A. Yes, sir. It is one of my favorite precincts. I got all the votes but three there when I ran for the Senate. I approve of their judgment.

Q. Did Mr. Robinson vote for you? A. I believe he did. Speaking of Mr. Robinson, who is the author of these charges, Mr. Robinson wrote to me after the "Examiner" had published several articles, and told me that he exonerated me from all these charges; he was hitting at other men. He stated in his letter that he had written a similar letter to the one written to me, to two—I think he mentioned two—Commissioners; but he said so far as the rest of them were concerned he didn't want to make any explanation to them, but he exonerated me from all blame. Of course he stated in the letter that the matters that he referred to were things that I had opposed, and disowned all intentions of having anything apply to me. Of course I presume he meant that because I had championed his cause in regard to this studio. I want to say to this committee now, that when I went into the valley first as a Commissioner, I went with prejudice against Mr. Hill; not personally against Mr. Hill, but against the rights that he had obtained from the Commissioners there, in comparison with the rights accorded to Mr. Robinson. I thought that they gave Mr. Hill everything and Mr. Robinson nothing. Upon an investigation I found out that they had given Mr. Hill the right to build a studio, which he did build, at an expense of several hundred dollars.

MR. HILL: Over \$800.

THE WITNESS: Several years before I became Commissioner; and a lease for ten years; that after that some considerable time Mr. Robinson applied for some similar privilege, but he applied at a time when the Commission had concluded they would not give any of those long leases any more, because they had had so much trouble about it—about claims grown up; but I found out they had not thrown many advantages in Mr. Robinson's way; simply refused to let him build; and at Mr. Robinson's request I became his advocate before the Commission, and I demanded, on his

behalf, that he should be given a privilege at least equal to Mr. Hill; and he offered at that time to build a studio, and they didn't want to give it to him in the place that he wanted. Well, I went out with him. He told me what place he wanted the studio, and eventually I got the privilege agreed upon that he should be allowed to build it there; and then the objection was afterwards raised that that would be departing from a rule, and allowing a private individual to build. So it was agreed that Robinson should furnish the builder and the plans, the whole cost not to exceed \$300, the studio to be built under his supervision alone, and the building to be put up just as he wished it to be put up—I mean in style—but not to exceed \$300. That was agreed. At the same time Mr. Hill came in and said that he held a lease for a longer term, and that, as it seemed to be a bone of contention, or seemed that it would be making a difference between the two, he surrendered the lease: so we accepted a surrender of his lease for the rest of the term, so as to put the two painters on an equal footing. It is true, as Mr. Robinson says, after we adjourned that meeting that agreement was not carried out with Robinson. I believe he states that Mr. Griffith told him that the Governor had concluded that it could not be done; did not have the power; that under the law the moneys derived there from rentals must be used in preserving the valley, and improving the roads leading thereto, and for that reason they got out of it. Well now, that was wrong; I don't indorse the action of the Commission in that matter. We agreed to a clean cut proposition that he should build this studio, or it should be built under his supervision, at an expense not exceeding \$300, held by the State, and we would lease it to him; and this agreement afterwards reached by the executive committee—and I was a member of it, but was not present—was in violation of the order of the Commission.

MR. TULLOCH: You don't approve of it then? A. I was not present. There was no action taken by any executive committee while I was present. But as I said, I was, of course, practising law in Fresno City, and between there and Mariposa; living in Fresno; and I had a number of invitations to be present at a meeting of the executive committee when I could not go, and I heard, through a letter from Mr. Robinson long after, that they would not build it, and about these difficulties; and, of course, the first opportunity I had to bring it up was the next meeting of the Commission, which was the next year, 1888. It came up again in the same form, and Mr. Robinson applied then for a building. He told me before he went in that he wanted this building that had been used, I believe, as a Post Office; the building that he occupied, anyway; and we gave him the privilege of using that building at \$1 a year, a nominal rent. He expressed to me at that time that he was fully satisfied, although he said that there were members of that Commission that he wanted to get after; he intimated that he would like a chance to. Of course, I knew what Commissioners he alluded to, but in his talks with me—and he was always very free and elaborate; it is unnecessary to speak of the elaborateness, probably—all his complaints seemed to be against Mr. Dennison; Dennison and two members of the Commission. He didn't like Mr. Raymond, who is dead. Mr. Raymond was brusque and abrupt and rather arrogant in his style; his manner of talking to people. I believe he didn't like Mr. Robinson either, and Robinson didn't like Mr. Griffith of Los Angeles, who is now off of the Commission; and perhaps there is somebody on the Commission now that he don't seem to be in love with very much, but his grievances seemed to be against the parties I have named mainly. At all events, he wrote me the letter that I have told you about; and the last annual meeting in June,

I left Yosemite Valley impressed with the belief that Robinson was fully satisfied with the arrangements the Commission made for him. We gave him at the last June meeting all that he asked. The only thing he asked—and that was all—was what I told you.

Q. Do you know anything about the breaking in of his doors, and the removing of his house? A. That I only know from him; I only know from him. He said that when his things were in this little house by the side of what was then called the Cosmopolitan Saloon—now used as a Guardian's office—he says that the Guardian broke the doors and broke in and removed his property from there; I heard him swear to it the other night here before you, and he told me on numerous occasions before that, when he was not under oath. I have no doubt it is true that the Guardian did enter his house, and took his things out. But at the last June meeting we gave him all that he asked, and he said that he was satisfied, and thanked the Commission, and after these articles commenced appearing, he wrote to me that he was not responsible for them and had not prepared them as against me; that he had sent some figures to the "Examiner," and he was afraid I would blame him, because he said in his letter, "I told you at the last June meeting, that I would like the privilege of having a table in the room where the Commissioners were; being provided with a place to sit, because I wanted to act as a reporter for the San Francisco 'Examiner.'" And, of course, I had the table and the arrangements provided for him so he could do it. He said: "I though perhaps you would think I was the author of these articles, and as they reflect on you in some way, I want to assure you that I did not write them."

MR. KELLY: Mr. Robinson always said he was all right on Goucher.

THE WITNESS: The "Examiner" stated that I was an attorney for the railroad company, making it appear that all the Commission were railroad men. It said that I was an attorney for the railroad company. I never was attorney for the railroad company in anything. I prosecuted some fellows who robbed one of the Yosemite stages for Washburn & Co. three years ago, but I was not a member of the Commission at the time I prosecuted.

MR. KELLY: Did the "Examiner" ever say you were an attorney for the railroad company? A. Yes, sir; editorially and locally—in its news columns and editorially. I never had a case for the railroad company, and never was consulted by them, and never by anybody who held stock in any manner in the railroad company. For the Yosemite Stage and Turnpike Company, while I lived in Mariposa, I was hired—there was a robbery committed just over the line, two men robbed two stages, and I went to Fresno for the company and assisted the District Attorney in the prosecution of the cases. On the first trial they were convicted; there was an appeal, and they got a new trial; and the second time I was in the Legislature, two years ago, and could not assist the prosecution. There was a hung jury, and there was a third trial, and I prosecuted them again, and there was another hung jury, and the case was dismissed. I was attorney for the stage company in that transaction, never in any other business.

J. M. HUTCHINGS.

Being recalled, testified as follows:

THE WITNESS: Mr. Washburn, before this committee, testified that I was saying matters or things against his company, and in favor of the Oak

Flat route—perhaps, I ought to say against his company and route, and in favor of the Oak Flat Company and route, after I became Guardian. I wish to state that that is positively untrue. I do not mean that Mr. Washburn does not think it. Some one may have told him. But after I became Guardian I made up my mind that I should work for no special interests of any kind, hotels, or roads, or anything; that I meant to be fair and square with each and all. That is all that I wish to say about that. Then in reference to another matter, that he thought the Commissioners never gave any orders for throwing obstacles in the way of his running in horses by way of Glacier Point. I state most positively that I received direct orders to construct a fence and prevent Washburn from running horses over that trail, because they had leased the privileges to other parties, and even if I took the whole force of men upon the ground, and if that were not enough to call upon them, and they would get the forces of the State if need be to protect that. I have these letters somewhere, and I have letters alluding to them right in this city now, to show that I was not only requested, but positively and decidedly ordered to do that work, and as I testified, it was the most unpleasant duty that I ever had to perform while I was Guardian of Yosemite Valley, but I obeyed my orders.

C. O. DREW.

Being sworn by the Chairman, testified as follows:

MR. TULLOCH: Did you or did you not at one time have an exclusive privilege for keeping a butcher shop in the valley? Answer—Yes, sir; I believe that I did.

Q. You did have? A. I believe that I did have.

Q. When was that? A. Well, I couldn't tell you what year.

Q. How long did you have it? A. I think I had it for three years.

Q. Did you at one time try to get a lease of the Leidig hotel? A. I put in an application, in Mr. Snow's favor, for the Leidig hotel, in his name.

Q. For Mr. Snow? A. Yes, sir; not in my own name.

Q. You didn't get it? A. No.

Q. Did Mr. Washburn ever ride over the Yosemite and Big Oak Flat turnpike road on a free pass? A. We never charge stage people.

Q. I would like you to answer the question; did he or did he not? A. Mr. Washburn went in on our road last season; that is the only time he ever went over our road. We would not expect to charge him anything.

MR. GARDNER: Did Mr. May ever?

MR. TULLOCH: That is the party? A. Well, yes; May has rode over our road; not on a pass, but on the courtesy of the company.

Q. He did not pay for it? A. No; he didn't pay the company anything.

MR. GOUCHER: You have invited me to ride over that road? A. We have invited all the Commissioners.

Q. You invited me last year, didn't you? A. Yes, sir.

Q. Does that hold good until next year? A. That holds good. We always invited the Commissioners, and we would like to have them come out over the road and see it; and the Governor. We got one of the Governors, and I don't know but one or two. Since I have been in we have had one—Stoneman rode over our road.

MR. TULLOCH: He was not a passenger, he was an extra individual, who came under the head of an invite? A. Yes, sir.

Q. Was May a Commissioner at that time? A. Yes, sir.

MR. GARDNER: Was Governor Stoneman? A. Yes, sir.

THE CHAIRMAN: Did May offer to pay you for the passage? A. I don't think that we asked him for any pay. I don't think the company asked him for any pay. I superintended the road, but I did not collect the fares. But I don't think he was asked anything.

MR. TULLOCH: Do you know whether or not after Mr. May passed over the road by reason of an invitation from your parties, without paying anything for it, whether or not he drew his expenses just the same? A. I don't know that.

G. G. GOUCHER.

Being recalled, testified as follows:

MR. TULLY: I want to ask you in regard to those toll roads outside. What is your opinion in regard to the extinguishment of those toll roads, as far as they affect the valley? Answer—I think they ought to be extinguished, all of them.

Q. Don't you think they are a great bugbear and scarecrow to the traveling public? A. Yes, sir. There is more complaint, Mr. Tully, about the toll roads leading to the valley, on the part of campers and people who are going in there, than about all other things combined.

MR. PRIEST: Do you know the difference in the tolls between the different roads to Yosemite? A. No; I am not familiar with the tolls; I never heard any complaint from your road, but the complaint I allude to has been from the Mariposa side; I have heard a great deal of that.

THOMAS HILL.

Being sworn by the Chairman, testified as follows:

MR. TULLY: You are well acquainted with the Yosemite Valley, I presume? Answer—Have been for twenty-four or twenty-five years.

Q. Been all over it? A. There is not much but what I have seen.

Q. You are thoroughly familiar with all the scenery? A. I could make a sketch right here, without looking at it, of every spot in the valley.

Q. Have you noticed anything that has taken place there, anything that has been done by any individual in there, calculated particularly to mar the beauties of that valley? A. Well, I could mention one instance.

Q. Let us have it? A. I think the cutting of some trees looking over in the direction of Mr. Hutchings' little cabin, so that they could get a better view of the lower Fall of the great Yosemite, is a mistake.

Q. You think it did not improve the beauties of the valley? A. No, sir; it does not. Now in regard to the cutting of the trees, if I may go on, I tell you, sir, I go to that valley to sketch those beautiful and grand rocks, and I positively assure you that I have not missed a tree. I don't see as there has been any cutting, except where I stated and around the Stoneman House. That was a necessity.

Q. That around the Stoneman House? A. That around the Stoneman House was a necessity.

MR. TULLOCH: What made it a necessity? A. I think it has been very well stated here—that the danger of trees falling upon the house. It is in the immediate vicinity of the cyclone, which might occur again.

Q. Does the cyclone come regularly? A. No, sir.

Q. Did they cut them on account of the cyclone? A. I don't know whether they did or not.

MR. GARDNER: If a cyclone had come, and these trees had still been standing there, there would have been danger of their being blown down on the house? A. Doing some damage to that State property. But I don't agree with some gentlemen who have testified that there has been a great cutting of trees. If they would go with the ax liberally now, they would do a great deal of good, if they only understood what they were doing—a great deal of good. It was a beautiful park when I first visited the valley. You could look from one side to the other; but now it is grown up with all kinds of brush and small trees; it is a perfect thicket.

Q. You have gone all over the ground where this wanton destruction of timber was made? A. I don't see it; I have not seen it.

Q. You heard Mr. Robinson testify? A. I have not seen anything of that kind. It may be there, but I have not seen it.

MR. TULLOCH: When were you there? A. Every year for five or six years past; spent a great deal of time there, and have been going, as I told you, for twenty-four years.

MR. KELLY: Do you think it improves young pine trees to cut off the lower branches? A. I would have cut them down.

Q. Does it improve them to trim up the branches eight or ten feet, and leave them standing, whole groves of them? A. I can't say that I like that. I should have cut them all out.

MR. TRUMAN: How many miles of road, about, do you think there is now around the valley? A. Well, sir; I think it would take me two days to go over the whole of it; to walk easily.

Q. Is it generally wooded; these roads, either on one side or the other, or on both sides? A. Yes, sir; it is considerably wooded.

Q. Most of the thirty-six miles? A. Yes, sir; too much to suit me. We go there to see those grand rocks. We can find plenty of trees outside; but it is a forest now. Of course, my friend Hutchings don't think as I do. He knows we have always disagreed on that; at least he may remember it.

MR. HUTCHINGS: In some things.

THE WITNESS: We disagreed on the trees. You were always for leaving the trees, and I was for cutting some of them.

MR. HUTCHINGS: I was in favor of protecting the trees, and not of cutting any down until they could be judiciously cut down by those who thoroughly understood it—Fred. Law Olmstead, for instance.

THE WITNESS: I don't think he knows any more about it than you or I, with all due deference to Olmstead. There has too much been said about Olmstead. I don't care a copper for him. No, sir; I believe in your judgment just as soon as I would his; and I will say right here that I believe, though I do not agree with Mr. Hutchings, that he is the best Guardian we ever had in the valley, and most suited.

MR. TULLOCH: Have you always had that opinion of him there? A. I have, sir. I have known him in the valley. Mr. Hutchings knows how to explain that valley, and entertain tourists as no other man that has ever lived there can possibly do it, and that is what we want. There are a great many who are not pleased with his management. He is like us Englishmen (I think he was born in England); I don't know, but we have a peculiar way that some people don't like. I am very sorry to see those beautiful trees cut, and I don't wonder at Mr. Hutchings feeling bad that they were cut near his cabin. They were beautiful trees, three or four of them. But that was done to get that vista through there, which I did not

approve of. It looks as though a cyclone passed through right in the direction of the Fall. That is the only instance, and around the Stoneman House, that I know of where it looks as though some trees should have been left.

W. C. PRIEST.

Being recalled, testified as follows:

THE CHAIRMAN: Is there any statement you want to make, Mr. Priest? Answer—I wanted to explain this feed question. I see that there is a great many don't understand it, even the Governor. In the Governor's statement last night he didn't understand it, and I think the Governor and half this Board of Commissioners don't know that there is more than one road into the Yosemite Valley, and my reason for thinking so is the statement they have made in regard to that feed. It is true they have all traveled over the Raymond route to the Yosemite, and the greater part of that road, more than half of it, passes through a barren country; but there are two other roads into the Yosemite Valley—the Coulterville and the Big Oak Flat roads—and within thirty or forty miles of Yosemite Valley on both of these roads there is far more feed held for market than the Yosemite Valley would consume if the stock were all kept up and fed. I was thinking to-day of the Governor's statement, and I will guarantee that all of those saddle train horses can be fed on 55 cents a day from our part of the country there. There is a very extensive farming country there in our part, and there is a great surplus now, and every year it is increasing.

MR. TULLY: You would be glad to find a market for your produce? A. Yes, sir; mighty glad to find a market. I live on the Big Oak Flat road, and I am buying as good hay as I ever saw for \$15 a ton, and it is hauled eighteen miles to my place, and on the Yosemite side of my place. I know last summer there was ground feed hauled from our neighborhood into the Yosemite that was sold for \$2 50 and \$2 75, and the farmers waited until next June for half of their money. There is far more stuff raised in our part of the country that wants a market, and can be delivered in the valley, hay for \$40 a ton, and ground feed from 2½ to 3 cents. That is something I wanted to contradict, as the Governor and two or three others made that statement here. It is only an excuse of some of these parties for keeping up those fences—that is the whole amount of it. I don't say that is the case with the Governor, but the Governor don't know there is anything raised in that country, and it is natural that he should say so, for the reason that he has not seen this side of it, where the Coulterville and Big Oak Flat road passes through. There is a great surplus of hay and grain there every year, and every year it is increasing, and it is no excuse for not pulling down those fences for the want of feed, for they can get feed in there cheaper than they claim to be using it and raising it; better hay and better grain. Another thing: in my opinion—I have some means of knowing, for I was a long time on the Commission—some man ought to be allowed to go in there and establish a hay yard; haul his own hay.

Q. I was going to ask that question. Allow me to put that question in another shape. Do you not believe that if horses were required to be kept out of the valley until such times as they were required in the valley for service, and then brought in and kept up and fed on hay and grain, that the parties who used those horses could still, even at the present prices, do that business with a handsome reasonable profit on their investment? A.

That won't work, and I'll tell you why: I know all the country around the Yosemite Valley for forty or fifty miles, and there is no place within ten or twenty miles of the Yosemite Valley that you can get any pasture to amount to anything. That won't work.

Q. Couldn't they establish their stables out there and haul their hay a short distance? A. They could feed them on the outside; that is very little better than feeding them inside.

Q. I was going to ask you whether or not it would not be good policy for the State, or the Commissioners, to have stables built there for the convenience of those who chose to bring their own hay in? A. I think so. I think there is already barn room enough. I think so. I think there is plenty of barn room there now for that purpose. Give some man the right to go in there and sell hay to camping parties. There is no occasion to ask more than three and a half for the best hay in the country. It is plenty, and there can be plenty of it got there and sold at that price.

MR. GOUCHER: Coffman & Kenney expressed to me and expressed to the Commission a willingness to surrender their right to sell hay. They don't want to use that privilege; the Commission compelled them to do it because nobody else had applied for the privilege.

THE WITNESS: It ought to be given to somebody. There are farmers up in our country that would be glad of that chance to make a market. They sold hay last year at \$60 and \$65. Last summer the Big Oak Flat Company contracted for small quantities of hay in there at \$42 50. I know there can be plenty of hay put into the valley for \$42 50, and good hay; and there is no end to the quantity; it is in great abundance and always increasing.

MR. TULLY: Suppose they haul their hay in there under the present conditions of affairs, would they find a place to store it? A. Yes, sir.

MR. TRUMAN: Why haven't they hauled it in? A. Because there is no one to buy it. Even during the time I was on the Commission I have known men to make application for a bakery, and known them to make application for feed yards, and all those things, and that was never allowed. When I was on the Commission I used to fight them about a number of things, and that was one of them that I was always opposed to. The great trouble with this committee, gentlemen, has been that the executive committee does the whole business. It was so in my time. I don't know how it has been since Mr. Goucher has been a Commissioner, but that was the case during my time, and that was the principal cause of my being disgusted with it. That man Briggs was more to blame for the bad management of Yosemite Valley, and all of this talk and this investigation has been caused by Briggs more than anybody else.

[Here the taking of testimony closed.]

PROCEEDINGS

OF THE

Committee on Judiciary Regarding Railroad Tax
Suits, Etc.

ASSEMBLY---TWENTY-EIGHTH SESSION.

PROCEEDINGS.

ATTORNEY-GENERAL'S OFFICE, STATE OF CALIFORNIA,
SACRAMENTO, February 14, 1889.

Hon. J. H. SEAWELL, Chairman Assembly Judiciary Committee:

DEAR SIR: I have been shown a letter addressed to you by Hon. Creed Haymond, in which he says that your committee "has concluded, before reporting a bill to collect the back taxes claimed to be due from the railroad company, to inquire whether there are any such taxes due, or whether the company ought to be required to pay, and to investigate other matters."

If your committee has come to any such conclusion, then it is safe to say that no bill will be passed at this session for reassessment of taxes where they have failed because of the original assessments being invalid or void. As this reassessment may involve an amount up in the millions, which the railroads should be compelled to pay, and as the session of the Legislature will soon expire, the bill should be pushed forward with all possible celerity. The investigation which is sought by Mr. Dunn and Mr. Haymond should be deferred until this bill is safe. *If the railroads do not owe any back taxes, this bill cannot possibly hurt them.*

Mr. Haymond says he wishes certain records and papers in the United States Circuit Court introduced in evidence, and that the Court will make the order if I will stipulate with him as to the subject. Inclosed please find the stipulation signed by me; but as the matters of difference between Mr. Dunn and Mr. Haymond all occurred *during the Attorney-Generalship of Mr. E. C. Marshall*, I desire to say that I have signed the stipulation simply as a matter of convenience. I had nothing to do with these cases until long after the findings were settled and signed and judgment rendered. When I came into office I took steps to have these judgments set aside, but it was impossible to effect this, because of the findings, which recited that certain things had been assessed by the State Board of Equalization which the Supreme Court of the United States says they should not have assessed. What was assessed by the State Board I know nothing except by hearsay. Of course, Mr. Dunn, also his attorney at that time, and the State Board of Equalization, could throw a great deal of light on the subject, and I merely suggest that the subpœnas include these gentlemen, and also Mr. E. W. Maslin, the clerk of the Board.

Very respectfully,

G. A. JOHNSON,
Attorney-General.

Chairman House Judiciary Committee:

MY DEAR SIR: I see that the Judiciary Committee, at the request of Mr. Dunn—and a very proper one it was—has concluded before reporting a bill to collect the back taxes claimed to be due from the railroad company, to inquire whether there are any such taxes due, or whether the company ought to be required to pay, and to investigate other matters.

Speaking for the company—as I have had charge to a great degree of these matters—we are willing and desire a full and thorough investigation, and if the House authorizes it, will present our side of the case as rapidly as possible.

Much of it depends upon the original records in the Circuit Court of the United States, which could not be taken to Sacramento under a subpoena, but could only be taken from the Clerk's office upon an order of the Circuit Court, which order would undoubtedly be made upon a stipulation between the Attorney-General and myself. Such a stipulation I am willing to make.

I would desire to examine the Clerk of the Circuit Court of the United States, ex-Justice McKinstry, Mr. A. L. Rhodes, Mr. M. H. De Young, Mr. W. T. Baggett, ex-Attorney-General Marshall; witnesses residing in San Francisco, most of whom are busy men.

If it is possible for the committee to hold a session in San Francisco, it would be a very great accommodation to these gentlemen undoubtedly; besides we need not, in that case, take the records out of their proper custody.

We would also want as witnesses the members of the State Board of Equalization, the Assessor of Yuba County, and the Assessor of San Joaquin County. We would also want Mr. E. W. Maslin, Secretary of the State Board of Equalization.

These are the witnesses that I think of at present, and I suggest their names now, so that we may not be placed in a position of seeming to delay the investigation which we earnestly desire.

If the question of expense is raised in relation to coming to San Francisco, the answer to that would be that the expense would be less than the expense of taking witnesses to Sacramento; or, if that would not be an answer, we would, in order to accommodate the gentlemen who might be called who occupy prominent positions, we would be willing to pay that part of the expense incurred by holding the investigation here.

If the resolution should pass the House to-day, I wish you would be kind enough to have subpoenas issued to have witnesses summoned in case you conclude to sit in San Francisco. Fix the date to suit yourselves, and summon the witnesses accordingly. We would want to take up the San Francisco branch of the case first, because it would hasten matters to go through in chronological order.

What I propose to show:

First—That the company has never attempted to delay proceedings, but that all dilatory pleas came from the other side.

Second—That the San Mateo case was a fair case, and thoroughly presented the questions.

Third—That the Controller of State and the then Attorney-General, and numerous other persons, threw discredit upon the San Mateo case, and charged that it was friendly, and that for this reason, and this alone, the controversy was not decided at the first term when that case was called up.

Fourth—That the Federal franchise was assessed every year up to the last, and its valuation included.

Fifth—That the company has paid more taxes since 1879 than could have been assessed against it, even if the Constitution is valid.

Sixth—That the company has never at any time attempted to evade the payment of a just tax, and it does not at this time owe the State anything.

Seventh—That in all of the cases the action of the company and of its attorneys have been fair and free from all fault.

These items cover the general points.

If the house pass the resolution of investigation will you be kind enough to notify me by telegram, so that we may prepare for the investigation and not cause any delay.

I am, very respectfully yours,

CREED HAYMOND.

SAN FRANCISCO, SATURDAY, February 16, 1889.

The committee met at 11 A. M. in the Supreme Court building.

The Chairman, J. H. Seawell, called the meeting to order, and the following proceedings were had:

THE CHAIRMAN: Gentlemen of the committee, we have met here, as you are aware, for the purpose of continuing the investigation on Assembly Bill No. 17.

A MEMBER: I do not think that is the purpose of this meeting. I do not think it has anything to do with Bill No. 17, but I think it is in regard to the resolution introduced by Mr. Dibble.

THE CHAIRMAN: Bill No. 17 is reported on, and this grew out of that, and while it is not directly connected with it, it is simply one question connected with that, and that is as to whether the charges as to the falsification of the record in that case, as made by the State Controller, are true.

A MEMBER: Let the clerk read the resolution introduced by Mr. Dibble, and adopted by the House.

[The clerk read the resolution from the minutes.]

A MEMBER: The records, I understand it, are at another place.

THE CHAIRMAN: So I understand.

MR. DUNN: My clerk has been waiting for Judge Sawyer, with a stipulation that the records may be sent here, I understand, and that Judge Sawyer desires somebody representing this matter to go before him, and make a showing upon which he can authorize the records to be taken.

MR. HYDE: I believe there are two different subjects that we are to take up. One is the railroad back taxes, and the other is the investigation of the record. I think that it would be proper for us at this time, and in this place, to take up the subject of the railroad taxes, and listen to those witnesses, and some time this afternoon to adjourn to the United States Circuit Court room, and when we are there we can have the records brought before us, without any requisition or order. Judge Sawyer will let us have the records right there. But that I consider entirely separate from this examination which we can take up at this time.

MR. HALL: I do not think we have anything to do with the railroad tax question, outside of the investigation of these records. Mr. Hyde said that we are to take up the matters concerning the railroad tax question. That has been reported to the committee, and we have nothing to do with that. I do not see what testimony there is to take in that matter.

MR. HYDE: The resolution says that we are to investigate the question of back taxes. I won't say it is railroad back taxes, but it has been admitted to be so. It is the back tax question that we are to take up at this time, and we might as well take it up now, and make an investigation of the records this afternoon at a place where we can best examine them.

MR. HALL: I think we may want to reconsider and change our report in regard to the bill.

A MEMBER: What do you want to do?

MR. HALL: To see whether these records are falsified or not; that is all I want. We will have to elicit our information before we can take steps in the matter. I am perfectly willing to reconsider. I was on the side of the minority, and I want to reconsider it. But what are we taking testimony for if we don't do that? We have already concluded to vote a certain way upon that.

A MEMBER: Don't you think it possible to receive testimony now of the witnesses who are here present; and when we adjourn we can examine the record at the United States Circuit Court room?

MR. HALL: We have already reported, and what is the use of our receiving testimony?

A MEMBER: Because that is what we are here for. We take testimony under the resolution introduced and voted upon, simply authorizing us to come here.

MR. STORKE: It seems that the best thing is to complete that stipulation, so as to get the record right before us.

THE CHAIRMAN: Mr. Haymond is present, and desires to make a statement to the committee.

MR. DUNN: As I understand it, it will take this committee all day long to examine the records, the entire day, and a portion of the evening, I believe.

THE CHAIRMAN: Here is the stipulation drawn up. [The Chairman produced a stipulation in regard to the withdrawing of the record from the Circuit Court, which stipulation Mr. Haymond signed.]

MR. HAYMOND: Gentlemen, my understanding is that the real purpose of this bill is the collection of back railroad taxes. I was invited by the Chairman of the Senate committee to appear before the committee for the railroad company; I suggested in a letter to him that there was no back railroad taxes; that all of the railroads represented in the Southern Pacific system had voluntarily paid into the State and county treasury more money than would have been legally levied against them had all the acts been constitutional. It was simply a suggestion made, and an excuse for my not appearing there. That before the Legislature went to all of the trouble of passing such a bill, it would be fairer for the Legislature to ascertain whether any taxes were due from the railroad company, as there seemed to be no disposition to collect any back taxes from anybody else. I do not desire to be understood as expressing any opinion as to what the legislators meant by that bill. I have no means of knowing. But these are the things that were in the press, and it seemed to me that if the committee would take time, and would ascertain that these railroad companies had paid to-day, as it can be shown by undisputable testimony—if you are willing to take it—more money than would have been levied upon their properties, had the tax been legal from the beginning to the end, that would end that matter. I stated in a letter which I was bound to send to the committee, that the Southern Pacific Railroad Company had no desire at all to interfere with the legislation of this State; that they did not desire nor did they wish to seem to desire to do it; that there was nothing in the language of the bill that affected either of these companies. I suggested there that if an examination was gone into—I did not ask it—that I would present all of the facts, and that everything we have done would be laid before the Legislature for its benefit. I thought that was our duty.

It was and has been suggested by men that the records have been falsified. So far as that is concerned, I have never seen the records until they were placed in the Supreme Court of the United States. The records of

a writ of error are made up by the Clerk of the Court, under the direction of the plaintiff in error. We have nothing to do with them; have no right to see them, and no copy is required to be served upon us. When filed in that Court and printed, the rules require the Clerk to send the records down to the defendants in error. And that is the first time that ever the defendant in error sees a record in error.

Lawyers will bear in mind that this is not a case of an appeal, but it is a writ of error, which is the institution of a new suit, and not like the appeals taken from one Court to another. The losing party sues out his writ of error, and becomes the plaintiff in a new action in the Supreme Court. He makes his record in the first case. He is not bound to serve anything at all upon us but the citation which issues from the Supreme Court when that record gets there. There were but few questions which we desired to present upon those records, going to the constitutionality of the law, and to the right of the State to destroy the property of the United States. The records were satisfactory to us for that purpose; and I do not believe for a moment that the Attorney-General of this State, or anybody else, has falsified them.

If you are going into this investigation, we desire to offer you every facility for getting the facts; and I have sent one of my associate counsel to the Circuit Court this morning for the records in the case, but they cannot be withdrawn without an order of the Court. If the State asks, and we ask, of course they will be brought here.

My object in asking you to come here to-day, was not to take up your time, but to economize your time and facilitate your labor. But I propose to say to you in the course of this investigation, and it will take more than to-day, working as rapidly as possible, that the railroad company has paid more taxes in proportion to the value of its property than any other people in this State, without any law, and in no instance has the railroad company ever delayed these cases. I propose to show you that we have paid into the county, State, and city treasuries of this State since the adoption of the new Constitution, which exempted railroad companies from taxation, and so held by the Courts, the sum of \$3,600,000, without any law. That in order to pay that money into the treasury, we have had to come into this tribunal and get its mandate to compel the officers of this State to receive these taxes.

I propose to show you that shortly after the passage of this Act, Collis P. Huntington brought a suit in the Circuit Court of the United States here, alleging that this Constitution here was unconstitutional, presenting but that single point for adjudication, and that the State of California, instead of meeting that issue and having it determined, went in there with what lawyers call a dilatory plea, pleaded in abatement of that suit, because it said that Collis P. Huntington had no right to bring that action. The Circuit Court of the United States decided that case upon that dilatory plea, interposed at the instance of the State itself, and refused to decide a question in which you are interested, and in which the people of this so called sovereign State are interested, because the State of California so desired. It stood in that tribunal represented by these officials, and justice was denied to us, because, they said, his action was not in form.

That case was appealed, as I shall show you, and I make the statement now, because, if you desire to go into this investigation, and will have the patience, it will end this matter now and forever, to the credit of the people whom I represent, for their conduct, and their action is without parallel in the history of this or any other country. No men, nor set of men, have ever contributed, without color of law, under the persecution of public officials

who were defying the laws of the State; whose duties had to be enforced upon them by the mandate of its highest Court: who had paid, voluntarily, three million six hundred thousand golden dollars to support and defray the expenses of that government. So, there was no end reached in that case, because the State of California denied to us common justice and common right.

Then these suits were brought; suits which eventuated in the San Mateo case, and it was claimed that a citizen of this State had no right to dispute a tax, and say that it was illegal; forgetting that it was under that standard at Bunker Hill that our fathers fought; forgetting that Hampden had been made immortal by resisting unjust acts; forgetting that the resistance to the paltry tax upon tea had given to civilization and the world the grandest republic that it had ever seen.

We were assailed from one end of the State to the other because we said: "We are the trustees of the National Government; they have authorized us as their agents to build across this continent a great military instrument to be held by us in sacred trust for the uses of that Government in time of peace, and in time of war." We asserted that the rails of the Central Pacific Railroad Company stood upon the same footing as a frigate of the United States. We had said, as it was our bounden duty to say, because we were the trustees and officials of the National Government, that when the earliest drum-beat was heard in the national capital, they had authorized and directed us to do these things; and we had built this road; and we had a right, and it was our bounden duty to maintain it, and that no State could tax that right, because that right to maintain that road was derived from the Federal Government. We held our commission from them, as the commander of your frigate at Samoa holds his commission. And it would have been no less treacherous on our part to have surrendered that property to the States or Territories through which it passed than it would be for the Captain of an American frigate to haul down his flag and deliver his ship to a German gunboat at Samoa. Now, whether we were right, or whether we were wrong, matters not. We had a right to assert that thing in the Courts of the country. No one accused us of covering our property, and no one said that if the State recovered judgment it could not make the money on execution.

That was the San Mateo case. Mr. A. L. Rhodes, one of the most distinguished judges that ever sat in this tribunal, of as pure and spotless character as any man who ever practiced at this bar, came to me and asked me if I desired that these cases should be heard upon the two great constitutional questions involved. And I said I did.

MR. STORKE [Interrupting]: It seems to me that this argument can be had after the matters are submitted to us, and are before us, rather than at the present time, as our time is limited. And I think we had better do our work first, and then hear arguments afterwards.

MR. HAYMOND: I will show Brother Storke that I am right. If your time permitted you to go into this examination, you would very much better understand it as it goes along, and the testimony bearing upon it, if I make a statement of my case now. It is customary in Court.

MR. STORKE: But it is the intention of the committee to hear testimony in this case to-day, and then afterwards we can continue the examination at Sacramento.

MR. HAYMOND: Yes, sir. I only want to put in this documentary evidence here, and call a few witnesses. It was for their convenience. I agree with you, and I am only stating the case now.

MR. DUNN: I understand that Judge Sawyer is at the Circuit Court and is prepared to give an order that these records may be taken up here.

MR. HAYMOND: I will sign any stipulation. No stipulation has ever been brought to me by these gentlemen to sign that I have not signed without reading it.

I arranged with the County of San Mateo, also, to bear a portion of the expenses of contesting that case. That rose in judgment afterwards, as you will see, against us. Judge Rhodes and myself took the answer in that case, and we eliminated from that answer every defense which we had to the tax; and we presented two questions to the Supreme Court of the United States: First, is this railroad a Federal instrument? Does it derive its right to do business, to charge freights and fares, from the Federal Government? If so, of course it follows that you could not tax that right, if it was a Federal institution. Second, does the Constitution of California violate the fourteenth amendment to the Federal Constitution?

Lawyers will understand the vast difference between that and a case which is tried in Court to determine the validity of a given tax. In other words, the San Mateo case presented to the Supreme Court of the United States this question: All of the State laws being valid, and all of the proceedings being proper, can this tax be levied under any circumstances?

In pursuance of that stipulation we went to the Supreme Court of the United States, and there argued those two questions, and those alone, upon their merits. Of course that case would have been determined in our favor; because subsequently the Supreme Court of the United States, as well as the Supreme Court of this State, decided that it was a Federal instrument, and that the State could pass no law to affect it, barring, of course, police laws for its protection. That case was argued and submitted. Then came a change of administration—and I am going to show all of these facts—and throughout the press, at the instance of numerous people whose names I will not mention, but will produce documents here, the good faith of the San Mateo case was assailed; it was said that the record was a false one; it was said that we had paid the taxes; it was said that we paid the expenses. Now, that was true, in part; because we were anxious to get a decision, and we said to the County of San Mateo, "If you will become a party, and employ counsel, etc., we will contribute, in order that this matter may be settled and that we may know our rights." Everything was said about the case which involved the honor or integrity of counsel upon each side, and in the language of a distinguished Justice of the Supreme Court, "their waste baskets were flooded with denunciations of the San Mateo case." And I want to inquire, in this connection, and fix the responsibility upon a man connected with this State Government who dared to approach the Supreme Court of the United States; whose mind was so base that he supposed any other consideration than justice or right would sway the mind of a single man sitting upon that bench, upon the bench of what a correspondent of the "Examiner" states to-day that "it is the most august judicial tribunal ever established by man." What was the result? That case had been submitted. They do not hold cases long, and it would have been decided. But under this flood of material (Mr. Rhodes, a stranger to the Court, I was not even admitted to its bar) such a cloud was thrown upon the San Mateo case that they set aside the order of submission, and at the instance of the State of California, and directed that the five cases should be tried here upon the evidence introduced, and that findings should be made, and that when those five cases were brought up they would advance them upon the calendar.

I will show that those cases came on for trial, and were tried. I will

show you that before they came to trial, the People of the State of California filed another dilatory plea in those very cases. We had averred, as we had the right to do, as the record will show in that case, that this assessment, independent of law, was a fraudulent one, and we were prepared to prove it. We averred the specific acts of the fraud: that the State Board of Equalization had willfully, fraudulently, and knowingly valued our locomotives, old and new, some of which had been in the service of this company for twenty-five years, at 80 per cent more than locomotives of the same manufacture could have been placed upon the roads. We averred all sorts of acts tending to prove fraud, that went to the merits, as they call it, of the case. Actual fraud was charged. And how did the representatives of the State of California meet that averment? Did they dare, in the presence of the Court, to allow it to come to trial? No, sir; they moved to strike from the answer, Mr. Storke, those very averments, which, if proven, would have justified us in the sight of man and of God. I, who had the charge of the cases, was absent in Europe, and on their motion, those averments were stricken from the answer, as irrelevant and immaterial, on their motion, not on ours. They shrank from the contest; they shrank from the proof which they knew that we had of the damnable fraud that had attempted to be perpetrated.

Had I been here, familiar as I was with all of the facts, I would have sustained that averment in the answer, because we had the right to make it; it has been drawn within the case of *Cummings vs. The Bank*, in 100 U. S. Reports, but counsel who conducted it never expected that a great State in a Court would shrink from the examination of such a charge as that, and it was stricken out. There was the next dilatory step.

All of this was done at the instance of the State, as we will show you. Then the case came on for trial; and this assessment was tried in that Court, and the ending was ridiculous. It never has gone to the Supreme Court of the United States, because it turned upon the question of elementary law. The State was represented in that case by Mr. Delmas, one of the ablest lawyers, and one of the brightest men in this country, who can always take care of his client if his client has anything to take care of, and nine times out of ten can get away with the case when the client has not got that. In that case it was found not that the fences were assessed, as these men put it; there never was any such finding as that; but they found that in valuing the specific things which the Board had the right to value, they covertly estimated in that the value of the fences. They had no more right to tax them than you have, the Court says. That was an elementary proposition. Not a lawyer on this committee but knows that from time immemorial it has been the law, if property which is not taxable is blended with property which is taxable, that it invalidates the whole assessment. That ended these cases. Then I will show you the next step.

A MEMBER [Interrupting]: Mr. Haymond, there is one remark of yours that I desire to be a little more enlightened upon. I understood you to say that, seeing that this company owed its existence to and derived its authority from the United States Government, it was not subject to State taxation.

MR. HAYMOND: Not subject to State taxation as to the things which we hold in trust for the National Government.

A MEMBER: What does that comprise?

MR. HAYMOND: That is the question. My opinion is that nothing that they have can be taxed, under the decisions. We have not raised that point, nor will we raise it as long as the companies are in the hands of the present men—

THE CHAIRMAN [Interrupting]: You are not interested in this investigation, then, are you?

MR. HAYMOND: I think I said that we were not. Having stated that we have no interest whatever in the Langford and Ostrom Bills, I am, as a citizen of California, interested in this investigation and, shall I tell you why?

THE CHAIRMAN: Yes, sir.

MR. HAYMOND: I have been deeply interested in the taxing system of this State. I say it without any egotism that I drew the first law, and had it placed upon the statute books, under which any tax could ever be legally enforced in this State. Long before I came into the employment of the Southern Pacific Railroad, I had been at Sacramento, and through almost every administration, I had been consulted upon these very questions, and out of the mere love that a lawyer sometimes gets for pursuing a subject, I have become very familiar with taxation, and all of the questions involved. I have listened with attention to the debates on the new Constitution. I have seen men stand upon the floor, men of eminent ability, and say to that convention that these provisions could not be enforced. I have examined them and upon the stump have told them that they could not be enforced. I have seen the fourteenth amendment to the Constitution of the United States declared by the Supreme Court of the United States to only apply to negroes. I believe that the fourteenth amendment to the Constitution was the keystone to our institutions; that at least it had embodied in a constitutional provision the great truths which lie at the foundation of every government, and which were enunciated in that new evangel of liberty, the Declaration of Independence.

I believe that the thirteenth, fourteenth, and fifteenth amendments had changed the form of this Government; had converted a federal republic into a nation; that the power of sixty millions of people under that amendment, whether they were black or white, whether they were associated together or not, could be invoked to protect their rights as against the State.

These were all great questions. I have had something to do with them for eight years, and I have lived to see the Supreme Court of the United States reverse the Slaughter House case, and declare that the right to life, liberty, and property, and the pursuit of happiness, could not be taken away from any man or set of men in this country either by the State government or any other power; that the humblest individual, languishing in a prison, without money and without friends, that the power of the State might send his application for a writ of habeas corpus to the Federal Courts, carry his case to the Supreme Court of the United States, and have it there whether he was deprived of any right, even though a Southern State was the power that was set in motion.

I have been interested in these questions because I know Leland Stanford. I have been his confidential attorney for eight years; have drawn his wills; have drawn the magnificent trust that he has created for you and for your children. I know him as a confessor knows a man. I know that while this property stands in his hands—because he has no interest in it, except in one single share—all of the bonds, all of the stock, all of the lands, the herds, and the cattle are not only yours, but they belong to mankind, under his direction to be maintained forever—to teach what? The great truth which lies at the foundation of Anglo-Saxon liberty, that all men are endowed with equal rights. After a few donations to his friends and relatives, which a decent respect to the opinion of mankind require him to make, it is all yours, except one share, which authorizes him to sit

with the councils of the Board and represent you. Not only that, but all his grand possessions are given by that instrument to you. I knew, when he told me that this Constitution invaded these great rights and that he opposed it, that it was the opposition which a statesman might make, and which ought for the public to be made.

The decision of the United States Supreme Court, which holds that the identical property involved here (that they have taxed), and which decision they follow afterwards in this action, and say, as a mere dictum, that it may be taxed, was made before they held it to be a Federal instrument; it was made upon the theory that while the property and business of a United States bank could not be taxed, yet its house, the building in which it did business, might be. It was based upon the theory that the State cannot prevent a mail carrier from buying stages and horses, and that they may be taxed, because the Government had no interest in the house and bank. But they have held that it is the franchise that the Government is interested in. Look into this Act of Congress, and what do you find? You find that it was not to carry the mails that this Act was passed. It was not to carry troops upon anything which these people might build; but it was to build a specific thing—an iron railroad—and to maintain that railroad forever for the use and benefit of the United States. And we have a contract upon the Oregon line, the greatest military road ever built upon this earth, to transport for all time to come free, the troops and munitions of war of the United States. That road, skirting these great valleys lying behind this range of mountains, supported by four or five transcontinental roads, defended this Pacific Coast, as millions untold could never defend the Atlantic Coast.

The first road was chartered, Mr. Salomon, when you were in the army, when I was in this State, and the destinies of this State hung trembling in the balance, when it was a touch and go whether it would have seceded from the Union or stand by it. Never did Congress intend that this State should have power over that road. I tell you, gentlemen, I may not live to see it, because I am an old man to-day; I tell you, in all sincerity, that I can sit down and demonstrate to you, as a mathematical proposition, that you can no more tax nor affect that line of steel rails, laid to bear the Federal armies from east to west, than you can tax a United States frigate off Fort Point. Why, my dear Mr. Salomon, had this doctrine that has been preached here ever been got into the head of South Carolina, you would have had no war. They would not have planted batteries and erected guns against the flag that floated from Sumpter, but they would have taxed the brick and mortar in it, and sold it under execution.

A MEMBER [Interrupting]: To what part of the road in this State do you think that argument applies?

MR. HAYMOND: To the Southern Pacific and the Central, the Government roads alone, and the Oregon branch, because in that the Government has a military interest.

And there is another point which has been overlooked. I have no interest in this matter in the world. I have less interest, perhaps, in what is going on than any other man could have of my age. I am an old man, alone in the world, all that is dear to me has been taken away, without a hope, without an ambition, except to be right. You are legislators charged with the interests of this State. I am saying these things to you as I would say them under the sanction of my oath, and as I hope to meet my God when I shall have been permitted to pass away. I tell you that is the position of this thing. Governor Stanford will soon be gone. Three out of five of these men have passed away. The control of the Central Pacific Rail-

road Company is no longer in their hands; they are stockholders holding their seats in the Board of that railroad company by sufferance of the men who hold it, who are not citizens of this State, and who are not identified with its interests. As long as they hold seats in that Board they will do in the future as they have done in the past, measure out to you not justice, as defined by rules of law, but justice as they see it. They have no interests but what are your interests, and they will pay these taxes, as they have paid them these years, although I say to you that no such taxation as this here was ever in any country imposed upon like property. I am speaking for you now, and I tell you that the State of California can regulate freights and fares upon those roads whenever the State of California can lower or raise the salary of the President of the United States. You levy this wonderful sum of \$2,500,000, and what do you do? For years and years, owing to competition, the difference between the income and the expenses of this road has fallen within \$100,000, and what do they do? They pay no taxes; they levy that sum themselves upon the counties through which this road runs. That would be a good way to collect all of the State's taxes. I tell you that. It would be a proper way to collect them, from the corporation. But it would not be just now to make the railroads collect it all, because they do not run into all of the counties of the State. It would make Santa Barbara pay too much, and it would make Alameda pay too much. But the plain and proper plan is to do what Pennsylvania and those States are going to do, to have the tax collected by quasi public corporations for State purposes, and put into the State Treasury. No more wasteful and extravagant system has ever been devised than the ad valorem tax system of California. Mr. Donovan, who served in the Senate with me, and who was the Assistant Treasurer of San Francisco, after careful figures made several years ago, said that under this system, counting all the expenses and waste, that you got into the treasury out of every dollar collected but 40 cents. I know of no man in the State of California who has given the subject of taxation more care than Mr. Donovan; a practical man, who has to do with it, and that is the conclusion at which he arrived. Of course, it cannot be demonstrated mathematically.

Then you would get rid of this confusion about assessments at different rates. For instance, the property in San Francisco is assessed at thirty-three per cent of its cash value, with but rare exceptions, while property in other counties is assessed at its full cash value. If the Langford Bill passes, probably that will apply a remedy that may be able to bring the Palace Hotel up to its fair cash value for the last ten years, but this makes confusion and trouble.

In the nature of things this property will pass away. It cannot be held much longer by these men. I wrote to the Governor of the State of California, and had I not been the attorney for the Central Pacific Railroad Company I would have sent the letter, because I felt that the railroad should be kept out of politics in every form. I would have called his attention to these things, and to the necessity of this legislation, and of such legislation as would fairly tax this property. Because I tell you there is no use to collect an ad valorem tax from any of these roads, because you can not sell them out; you can not sell the legal title. The Act of Congress fixes the legal title of the severalty in the whole. We had a contract with them to build the road and take so much land, they lending us so much money. I will furnish you my argument before the Pacific Railroad Commissioners, where I discussed this proposition. In 1855, or thereabouts, this company had the option to pay those bonds, or surrender the road to the Government of the United States—that is, the interest. There is a first

mortgage upon it, but the United States had provided that their interests should never be foreclosed under that first mortgage. Whether I am right or wrong, these are questions for your serious consideration.

The taxes for 1880, 1881, 1882, and 1883 had all become due, and suits were pending in nearly every county of the State and the State's finances were demoralized. In 1881, or may be 1880, when the State Board of Equalization made an assessment, there were no provisions making due process of law. Subsequently that was remedied. Judge Field decided that assessments should be made between two certain dates, and that parties might come in and be heard, or waive their objections. So far as these assessments were concerned, if they were valid in other respects, there was due process of law.

MR. DUNN: Were you not in favor of the Act of 1883?

MR. HAYMOND: I am in favor of every Act that the Legislature passes, if it agrees with the Constitution of the United States.

MR. DUNN: Did you not state, as Senator, during the session of the Legislature of 1883, that you were in favor of that Act?

MR. HAYMOND: Yes, sir; because Justice Field was in favor of the passage of those provisions. I had argued that the law which gave to the Board of Assessors the right to assess at any time, or at any place, without notice or hearing, did not constitute due process of law. When this bill was introduced I was asked if that would constitute due process of law, and I said it would.

MR. DUNN: Have you not objected to paying the taxes on the ground that that Act was unconstitutional?

MR. HAYMOND: The Courts of this State have decided that these provisions are unconstitutional; and that you set up a special system for collecting railroad taxes which the Constitution of this State declares shall be done. I am not like you in this matter; I think I am impartial.

MR. DUNN: I think I am as impartial as you.

MR. HAYMOND: I differ with you.

MR. DUNN: What I want to understand now is, I understood you to say that during the session of the Legislature of 1883, when this Act of 1883 was before the Legislature, you were in favor of its passage.

MR. HAYMOND: Yes, sir; and I say so now.

MR. DUNN: And that you believed that the railroad people would pay the taxes?

MR. HAYMOND: If they were fairly assessed; and so they have.

MR. DUNN: Now, if I understand it, I think I can prove by the record this afternoon that one of the main points of objection which you make to paying the taxes is, on account of certain provisions in that Act, that you have favored in its passage.

MR. HAYMOND: I did not make the laws of this State. I might be in favor of the passage of the Act, but there was from the start no law here at all by which the railroad taxes could be collected. My attention was called to the due process of law, and I wrote an opinion, and said that that made due process of law. As to other provisions in other laws, the Courts have decided that they are all invalid.

For the taxes of 1886, suits were brought in the State Courts. We did not remove them to the Circuit Courts at all. They were tried in the State Court. Those suits involved every question, both as to constitutionality and everything else. They went off on demurrer, and were decided in our favor about two years ago. Two years ago they were appealed to the Supreme Court of this State. We tried to get the case advanced; tried to have it heard. You know how the calendar is crowded. In that case all

of these questions as to the validity of these other acts which you are now passing were involved. It covers the Langford Act. If they are constitutional, then the question as to whether the Constitution is constitutional is also involved. I have tried by best; have petitioned the Court to advance that case; but the State has objected, and it has not been advanced. It can be heard in this tribunal in forty-eight hours. I am ready to argue it at any time. I think the Court has decided in two cases, that the Act is unconstitutional. That case has lingered in this clerk's office involving all these tax proceedings. In our effort to get some decision, we petitioned this Court, and set out all of these facts, and asked them to hear this case, to put the matter at rest.

This Legislature is now discussing the validity of this Langford Bill when the opinion of the Supreme Court of the United States could have been obtained at any time within the last few years, as to the constitutionality of the question.

Now, take the tax for the fiscal year 1883-84. The Spring Valley Water Company have been allowed to settle their debt to the State for the flat tax, no interest, and 10 per cent taken out of the tax. I have been saying, as I shall show you when I introduce proof, that we were anxious to pay a fair rate of the tax; that we were offering to pay for the three years, upon the assessment made in 1882. The "Chronicle" then published an article, and said that if this railroad company is honest—if Haymond is telling the truth about this thing—they will come up and pay the taxes flat, without penalties, without attorney's fees, and without interest. I wrote to Mr. De Young a letter, in which I told him the position in which his paper had placed itself. I said to him: "Now, I am willing to stand any test as to the sincerity of my motives, because I have no interest in the matter. I am simply a lawyer, and I am willing to stand by your proposition. I am willing to do it. We have paid some of the taxes, and we are willing to pay \$1,400,000, the taxes for those three years, to make it cover all, flat, without interest, penalties, or anything else." I took the letter to Mr. De Young, and said to him: "I do not want to take any advantage, as an attorney in this case, in the newspaper, but if you are willing to stand by that proposition, publish my letter, and say it is right, and I will make the payment to the State." He did. And we went then and paid the money. We paid every quarter of a dollar that the State claimed up to that date. Now understand Mr. De Young's statement was, that all litigation should stop then. What did we do? We went into the Circuit Court of the United States, and submitted this question to Judge Sawyer, and asked him upon all of these records, to render a judgment against us, and in favor of the People of the State of California, for the amount of the taxes that we paid out. I had then the checks in my pocket for the money, drawn upon the Bank of Nevada; for the balance, as there was some deductions to be made for partial payments that had been made. Judge Sawyer stated from the bench: "These cases have been submitted, upon the facts, I find for the defendant." Then he said: "I will not render judgment, because this whole thing is invalid. I will not put myself in that position." Then I said: "We are in a box," to Mr. Marshall, the Attorney-General, who had been our bitterest enemy, who had tramped this State from one end to the other, assailing us, and everybody else, and he is a very clever, bright fellow; he is the only man in the world that I ever liked to have abuse me, because he does it so nicely. I then made a stipulation with them, that this judgment should be set aside, the judgment rendered in favor of the State of California, for the principal, and I did not ask him to carry out his agreement. I said: "Now, there is an excitement about

this, and do not do it. I will stipulate with you, that you may take an appeal from the judgments to the Supreme Court of the United States; that they shall not be treated as consent judgments; and if you get a judgment against us for these taxes, with fees and penalties, we will pay them." That stipulation is upon record. Now, Mr. Storke, I am coming to the extra session question.

A MEMBER: Would it not be a good stopping point to take a recess?

THE CHAIRMAN: Let Mr. Haymond finish.

MR. HAYMOND: That was the situation; but Mr. Delmas said that that was a consent judgment, and the Supreme Court of the United States would not hear it. I said: "No; who is there to object? We have stipulated not to do it. A judgment is a contract, and where the parties consent that a judgment be a final adjustment of its rights, as its terms import, they cannot appeal." But here it was stipulated as in a written contract, that as to this thing it should not be final. They rushed to Sacramento, and got Governor Stoneman to convene an extra session of the Legislature. For what? Mr. Dunn figured up that we owed to the State about \$1,000,000. He counted interest upon this at 2 per cent a month, compounding every half second, I believe. I don't know how he got at it.

MR. DUNN [Interrupting]: That is not a fair statement of it.

MR. HAYMOND: It is something like counting up the value of moon-beams and multiplying them by a hundred.

There was no interest under the law upon these taxes; there was no attorney's fees; there were no penalties. But if there were, the State had a stipulation that they might appeal. But they said "the Supreme Court won't hear that." I went to General Stoneman with Colonel Joseph P. Hoge, and submitted to him a stipulation at that time, and after consulting with Colonel Hoge, whom we regard here as the head of the bar, and as to matters of taste and propriety we will take his word, and look to him as our leader, type, and pattern of what should be done at the bar, he, "the noblest Roman of them all," I telegraphed to the Supreme Court of the United States the situation here, and asked them if they would advance that case to a hearing, if both sides stipulated. You cannot stipulate to advance cases in the Supreme Court of the United States. The Judges directed the clerk to telegraph back to forward the records, and they would determine the motion, which was all that they could say.

An extra session was called. And now we have this remarkable position, and the records will bear me out in this, that the State was paid every dollar that belonged to it; that they had a stipulation with us that the Supreme Court should determine whether we owed any more, and if we did, that they should take judgment for that amount. They were the plaintiffs in error. I made this stipulation in order to test the law, because they have always been wrong. There is no instance in all of this litigation where they have ever been right. In order to test their law. I went, though not an attorney of the Supreme Court, under an associate's name, Judge Brown; and at the opening of the next term of Court, moved to dismiss that case, upon the ground that this was a consent judgment, taking their ground that the Court would not hear them. Of course, I knew that they were not consent judgments, not within the meaning of that term. And, so that I may state this thing accurately, I have the documents here.

I agreed with the Attorney-General that that motion might come up without notice. And here is the stipulation. And I will venture that that presented the attorneys in such a position as you have never seen them. They were the plaintiffs in error; they were the only men asking that the Court would not hear the case. I could not make the motion against my

own stipulation, without stating it, and so I stated the whole case. And then, I said in order to make myself right—because no lawyer would want to stipulate one thing and do the other—I said: “In making and submitting this motion, it is due to counsel who made the stipulation, the defendants in error in the Court below, to say that they fully recognized the binding force and effect of that stipulation, and that this motion was not made for defeating the effects thereof; but merely to take the opinion of the Court upon this question,” etc.

That was in the San Bernardino case, a test case. There were fifty or one hundred of all of these cases. On the next morning the Supreme Court said: “This is not a consent judgment; we will hear the case and determine it.”

MR. DUNN: I understand you that the San Bernardino case that went up to the United States Supreme Court was the case in which it was stipulated that all of the other cases should abide the decision in that?

MR. HAYMOND: That was the stipulation between the Attorney-General and myself.

MR. DUNN: I deny that charge, and I shall prove the truth of my statement to the committee this afternoon.

MR. HAYMOND: I simply assert that that was the stipulation. I have made a great many stipulations in my life that were not in writing. I practiced law with one of the Justices of the Supreme Court on the bench for six years in one of the counties of this State, and I have practiced for years, and I never knew a stipulation to be filed in that Court. Governor Johnson can vouch for that. He lived there, in the County of Sierra, and nine stipulations out of ten were not in writing. We understood what we wanted; whereas, if we were to put it in writing, we might not express it. I do not know whether there was a written stipulation or not, nor does it matter. My verbal stipulation has always been better than a written one; because I construe it upon the other side. Mr. Dunn talks to me about law, when he is not a lawyer and does not know anything about it. He ought to have a lawyer.

MR. DUNN: I do not deny stipulation in the San Bernardino case, but I do deny that a stipulation was made in that case, covering all of the other cases—

MR. HAYMOND [Interrupting]: I never said it did. I said I had a stipulation, or had stipulated that the other cases should abide the result of that one.

MR. DUNN: I deny that.

MR. HAYMOND: You deny it because you do not know anything about it. You might deny that Mr. Storke and I had met upon the street this morning. That was the understanding.

They heard the San Bernardino case, and they said there was no attorney's fees, and no nothing, and decided it upon its merits. That I will present to you. That, of course, disposed of everything. What was the extra session called for? We understand that the Governor can call a session of the Legislature, and can say the subject upon which the Legislature is to legislate, but the Governor, in this most peculiar proclamation, directed them to do certain legislation. But nothing was to be done. These five cases had started on their way up. It was the duty of the people to take them up, and we had made no objections. There was not an engrossed statement in any of those cases, but we waived them; we told them that they might make up their record on appeal from the rough, unengrossed notes, or in any other manner; to go up to that Court just as they pleased. There never was an engrossed bill of exceptions in any of those cases,

because the Attorney-General had no money, and I waived that. You will find, when you investigate that, that that is the foundation of these notions that Mr. Dunn has got about the Attorney-General having falsified his own record.

Instead of taking the five cases, as the Supreme Court of the United States had directed, so that they could determine the whole subject, they took up one case, and the Supreme Court said: "No, we won't hear this thing piecemeal. Bring up your records." Then along came Attorney-General Johnson, and he and I met, and three times in the United States Court we have argued these questions; three times, and we have never shrunk from their determination. And I tell you now, that there is a case pending in this very Court, and this community can have it called up, because when we consent, this Court will take it up and determine all of these questions, and I will agree that it shall.

Then another proposition: I will show you that I offered to stipulate with this State to waive all of these constitutional objections, and to go into the Courts and try the question upon the question as to whether we had not paid all our taxes; agreeing to pay the balance, and not to appeal, unless they provided for appeal; stipulating that I would interpose no technical objections. Now, Mr. Storke, it is an elementary proposition that no State that desires the name of being a civilized State will deal with its citizens upon any other basis than that. That is the reason a State is not allowed to be sued, because a State will do justice.

MR. STORKE: Do you mean, to bring an action upon an implied obligation to pay?

MR. HAYMOND: Yes, sir; and let the Court determine how much we owe, if anything. We claim that we have overpaid our taxes. But we will admit that the State Board of Equalization in 1883 admitted that they had assessed us above all other property.

A MEMBER: Did you pay any taxes for 1885, 1886, and 1887?

MR. HAYMOND: Yes, sir; and another thing: when this suit for the taxes of 1885 was pending, we took into the Court about \$300,000 and tendered it to them.

A MEMBER: The tax was \$500,000.

MR. HAYMOND: Yes, sir; and we stipulated that it should not affect the balance of the debt; and up to the very day that the mandate of the Supreme Court of the United States issued, they only had to take an order of the Court to get that money. Now, if anybody owes that money to the State of California, it is the bondsmen of the Controller. He refused to take any money on account. The Court decided that he was wrong in it. He managed and controlled the case, and he lost \$300,000 that might now have been in the State Treasury. That is in the record.

MR. DUNN: In what Court was that tendered?

MR. HAYMOND: In the Circuit Court of the United States, and in the pleadings. When we did that, Mr. Marshall was the Attorney-General, and he went, as you should have gone, and got an order from the Court, that the money be paid to him. Such a thing is without parallel.

MR. DUNN: Where is the money now?

MR. HAYMOND: We have got it, and you owe it to the State, or your bondsmen owe it. For every year, although not one dollar of these taxes has ever been legally levied, not one dollar, why did they not press their suits, and why do they not press them now?

What wrong have we done? That stipulation is open to you to-day. I will wipe out every judgment; I will agree with you, sir, to go into that Court, and they may determine and take an account of all the assessments,

with regard to the constitutionality of this debt, and without regard to any other provisions, if we owe the State one single dollar, I will leave it to this committee, if they will assume the responsibility. If the Legislature will authorize you to sit under the sanction of your oath, I will leave it to you, and I will give a bond security to pay the amount; and will give a bond that will establish before you that we have paid more than half a million dollars more than is due, and will agree that when you render judgment in our favor, I will contribute that amount to the State Fund. I will stipulate to leave it to this committee; and I will leave it to you, Mr. Storke, if the State will do that.

Now, what position are they in? They talk about a sovereign State. The great trouble is that these men have confounded themselves with the State of California; and their unlawful acts they ask the sanction of this people for. Strangers to our race, strangers to our institutions, they cannot comprehend these great principles which are born in every American boy, and are his birthright.

A MEMBER: I, for one, would be willing to accept your proposition.

MR. HAYMOND: I am willing to stipulate now, though I am a stranger to Mr. Storke, I know he is a lawyer, and I know the estimation in which he is held by the Courts of this State, and I know the estimation in which I hold him; I am willing to put my case in his hands, without any stipulation, and without any appeal, and whatever his judgment is, they may take an appeal from it, but as to me, it shall be a finality.

Now you say you have not got the power to do that; but, my God, is there any law or any constitution which prohibits a State, through its Legislature, from doing right? Are you not passing claims every day which could not be enforced against the State? Are you not giving relief against your laws? I made these proposals to your State authorities years ago in writing. They have never submitted them to the Legislature. I am willing now to join with anybody in passing or submitting that bill. I can make a stipulation after the bill, and it is valid, with the Attorney-General. I will make it; will waive everything; will waive the judgments which he will get in any United States Court in Christendom. I am saying these things to you because this company has been misrepresented. Times have changed greatly in the last few years in its favor. While the men at its head were struggling to preserve this property to you, while they had to bear the reputation of being rich, I grant to you all that their agents, unobserved, did things which ought not to have been done. My advice to them in writing, which I will read to you on this investigation, was, that under this form of government, this great Anglo-Saxon race, and the sense of justice implanted in its bosom, the railroad company could safely appeal to the people, without having a lobby behind it. Then it was all there was of the State; now it is nothing. It has elevated this State into its prominence; they have dropped out of sight, and are insignificant. In their earnest effort to keep from the legislative halls, and to keep that corporation out of politics, we deserve—we may not receive it to-day, but we will to-morrow—the assistance of every honest man in this State.

It is proclaimed publicly through the State and through the press, that bills have been introduced into this Legislature in order to bring the "sack" to light. I do not know whether there is any truth in that. I have known something of Legislatures from my boyhood, and I have seen very few men in any Legislature that I believed to be corrupt. I have known men to be sold, delivered, and paid for—or heard that it was so—whom no amount of money or any indirect influence could purchase. The great danger in this matter, when we are striving to accomplish this thing is, that the best

men in the Legislature will be allied with the base ones, if there are any, under the pretense that they are serving the people of the State.

I say again, that we desire support in these measures after these offers solemnly made in writing. And I will go further than that, and tell you, Mr. Storke, the dangers of the situation. If I had time I could satisfy you of it; of our desires as citizens of this State, for this property will soon pass away to other States. I am willing to do this, to stipulate that the record now in the Supreme Court shall be made as you will make it, to determine all of these questions. I will give you a *carte blanche* stipulation to amend that record as you please, without anything except the pledge of your lawyer-like reputation that you will do right in passing upon this question. I will stipulate with you that that case may be heard on thirty-six hours' notice, to have all of these questions decided. I will agree with you further, to have a bill passed, in case this whole system is declared invalid, which the Supreme Court has already declared it to be; and I say, as Mr. Conkling said, "It stands without parallel; it is all upside down."

I have read his speech upon it in the "Examiner" this morning. He was one of the greatest lawyers that this country ever produced. No man ever doubted the purity of his character.

I will agree with you, and with this committee, to put the case in your hands; to go with you to these Justices and ask them to determine it as a public matter. Then we will know what the law is. If it is decided that the whole thing is invalid, I will sit down with any committee which you may appoint, and assist you to the best of my ability—and I know as much about these things as almost anybody, because I have made them my study for twenty years—in preparing a revenue bill which will collect taxes from the railroad company. These proposals we come to you with. Because I want this railroad company to appear before this people as I know it should. Can it be done? You remember as a lawyer, Mr. Storke, that for a thousand years when the King of England, that country from which we derive our jurisprudence, took the oath of coronation at Westminster, surrounded by the tombs of his ancestors, that oath was taken to administer justice in mercy. And no State can afford to make this record; no State can afford to refuse its citizens a hearing in Court if that citizen waives all of his rights. That will settle this question.

MR. STORKE: I will ask you whether you would be willing to make up a record of the case that is now in the Circuit Court so that it should contain nothing but Federal questions?

MR. HAYMOND: Yes, sir. But in that case, put them all in; let us know the whole of them. I speak now of an amicable arrangement which shall not raise any of these questions. I speak now as to this stipulation. I do not raise the question that the law is unconstitutional; I waive that. I only raise the one question that they have assessed property which they ought not to have assessed; and that they have assessed it out of proportion to other property in the State. This stipulation which I make does not involve any of the questions which we waive.

MR. STORKE: I asked you if you were willing that a record should be made up containing Federal questions?

MR. HAYMOND: What do you call the Federal questions? I have always done that. Certainly I will do that. But that question will be decided by this Court here, and the Supreme Court have decided it. If their decision is against us, we will have a writ of error. Most of these cases have been decided.

MR. DUNN: The case of the State of California against the Northern

Pacific Railroad Company, and the case against the San Pablo and Tulare Railroad Company, were not ~~appealed~~.

MR. HAYMOND: I made a stipulation to the Attorney-General: I do not know what that stipulation is, but he has got it: I have not seen it.

MR. DUNN: The stipulation is an agreement. [Inaudible.] General findings were entered in those cases. It is agreed that those shall be set aside, and that the cases may be brought up in the United States Supreme Court. Will you agree and stipulate to have those cases brought up, and the decision of the question as to whether our system of assessment is in violation of the fourteenth amendment, or whether you have had due process of law?

MR. HAYMOND: We have had due process of law.

MR. DUNN: Whether our system of assessment is in violation of the fourteenth amendment? Will you agree to take a case of that kind up to the Supreme Court embracing the question of the fourteenth amendment only?

MR. HAYMOND: Yes, sir. And I will take this case up now any day that the Court can hear it.

MR. DUNN: The case against the California Pacific, and the Northern Railroad Company, and the San Pablo and the Tulare, I think, contain no Federal questions of franchise, etc.

A MEMBER: In that stipulation, do you reopen the back cases?

MR. DUNN: No, sir.

MR. HAYMOND: I shall not raise the question that we are not subject to taxation at all. That was decided in the Union Pacific cases, and it has not been raised in any of these cases.

MR. STORKE: If we are going to make a test case, we had better have all of the Federal questions in.

MR. HAYMOND: Then I will put that in. We have paid our taxes this year in full.

MR. STORKE: For the benefit of the State hereafter, that should be settled.

MR. HAYMOND: Yes, sir; and in case that decision is against you, a commission should be appointed of the Governor, the Attorney-General, the Controller, the Secretary of State, and some other officers, vested with power to appoint a commission of three competent men, to present to the next Legislature some system of railroad taxation. We will pay our taxes up to that time, without any law. It has not taken any law to make the railroad pay their taxes. We will pay the taxes up to that time. This will settle the whole matter, I understand it, and we need not go any further.

SEVERAL MEMBERS: No, sir.

MR. DUNN: I propose to prove that my statements are true.

MR. STORKE: That any officer of the State has committed a falsification of the records?

MR. DUNN: In relation to the taxes of 1884, in the cases against the Southern Pacific and Central Pacific, or the San Pablo and Tulare, or the Northern Railway, one of those cases contained the findings which I understand were agreed to by the attorneys for the railroad?

MR. HAYMOND: No, sir; they were submitted, but the findings were settled by the Court.

MR. DUNN: They were prepared by the attorneys for both sides and submitted to the Court, and there was no question raised between the attorneys as to the findings. Of course, counsel discussed the matter, but when you presented the findings to Judge Sawyer, it was agreed that you gentlemen were satisfied.

MR. HAYMOND: Possibly, yes, sir.

MR. DUNN: In every case where the findings would show that the State Board of Equalization, in 1883, assessed the fences, they were untrue. I propose to show to this committee that the Supreme Court of the United States decided some of those cases upon findings that were false.

MR. HAYMOND: That is very often the case.

MR. DUNN: I shall also be able to show this committee that four miles of water across the Bay of San Francisco was found to be assessed by said Board—

MR. HAYMOND [Interrupting]: I make no point upon that. I don't know whether it was or not.

MR. DUNN; I shall prove by Mr. Ryan, the tax agent for that company, that he knew that we did not assess fences.

MR. HAYMOND: I believe I can put you on the stand and show that you did assess fences last year. I don't think you intended to do it.

MR. DUNN: Put me on.

MR. HAYMOND: Mr. Delmas said that you had done it up to 1885.

MR. DUNN: Mr. Delmas did not say anything of the kind, that we assessed fences up to 1885.

THE CHAIRMAN: The committee will now take a recess until two o'clock and fifteen minutes P. M.

At two o'clock and fifteen minutes P. M. the Commission met, and took a recess until three o'clock P. M., at which hour they met in the United States Circuit Court room, and the following proceedings were had:

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

I, Creed Haymond, being first duly sworn, do depose and say: That about the month of September, 1887, the honorable Stephen M. White, now Lieutenant-Governor, came to me and represented that the Attorney-General desired him, White, to see me, and to state that the Attorney-General was anxious to have the question whether the Constitution of California, relating to the taxation of the property of railroad and other quasi-public corporations, was in violation of the fourteenth amendment to the Constitution, determined by the Supreme Court of the United States, and wished to know whether I would sign a stipulation that the cases might be advanced for argument upon the calendar of the Supreme Court. I stated to Mr. White that a stipulation to that effect would amount to nothing; that the Supreme Court would only advance the case upon statement of facts, showing that it was such a case as should be advanced, and not upon the mere stipulation of attorneys; or, in other words, that the Supreme Court of the United States would not permit the attorneys to arrange its calendar. I had just received, and had upon my table the records upon the writs of error in cases which the Attorney-General desired to be advanced. I turned to the record, and showed Mr. White that under the decision of the Supreme Court of the United States, already made, the question which the Attorney-General desired to have decided would not, in all probability, be determined by the Court; that the cases would probably pass off on the questions of the taxation of the Federal franchise, or other infirmities in the tax. Mr. White, after examining the record, agreed with me upon this subject. I told him that I would be pleased to see the Attorney-General, and talk with him upon the subject. Subsequently, the Attorney-General called, and I went over the same matters with him. He either presented to me a written statement or stated orally that he would

make a motion to advance the cases upon the ground that such a question was involved, and that the cases would turn upon it, and asked me to concur with him in that statement. I told him that I could not join in such a representation to the Supreme Court of the United States, because these were writs of error from the Circuit Court, and that the Supreme Court of the United States would have jurisdiction over the whole case, and could decide any question that the record raised, and had already determined that it would not decide a constitutional question if there was any other point upon which the case could be determined.

Had I joined with the Attorney-General in the representation, as requested, I believed, from my standpoint, that I would have been imposing upon the Court.

I also stated to the Attorney-General that there were five cases pending in the Supreme Court of the State of California; that I would stipulate to take them up with him at any time the Court would determine, and bring them to a hearing. I said to him that these cases could be decided and taken up to the Supreme Court of the United States on writs of error, but that a case going to the Supreme Court of the United States from a State Court upon a writ of error would only give the Court jurisdiction over Federal questions, and that it would not look into minor questions, such as whether fences had been assessed or not. I also told him that we could probably get such cases before the Supreme Court of the United States as soon as the other cases and get a decision on the Federal questions. He declined to join with me in such a stipulation, and advised me that he would apply, as he had the right to do, to advance the other cases. Having notice that the application would be made, I sent to the Clerk of the Supreme Court of the United States a telegram, of which the following is a copy:

SAN FRANCISCO, October 7, 1887.

Clerk United States Supreme Court, Washington, D. C.:

The Attorney-General of California advises me that he will move the Supreme Court of the United States to advance the railroad tax cases now upon its calendar. Five tax cases were tried in the Superior Court of San Francisco about the beginning of this year, and in each case judgment was rendered in favor of defendant, upon the ground that the statute of California under which railroad taxes were assessed, was in violation of the State Constitution, and therefore void. These cases have been appealed to the Supreme Court of California, and will be heard at the January term of that Court. If the judgment of the lower Court is affirmed, it will finally dispose of all the tax cases pending in the Supreme Court of the United States. I suggested to the Attorney-General to state this fact in his petition to advance the cases, believing that the Supreme Court of the United States would not wish to pass upon that question when it was pending and about to be heard and determined by the highest Court of this State, it being a question as to the construction of the State Constitution, the determination of which by the State Court would be followed by the Supreme Court of the United States. The Attorney-General has said that he will not state this proposition to the Court in his petition to advance the cases, but has agreed that I may state the fact to the Court. The Attorney-General will be in Washington and no doubt will agree that this statement is correct. Please be kind enough to submit this telegram to the Chief Justice, in order that the attention of the Court may be called to the fact. If, notwithstanding this, the cases are advanced, I would like to have them heard at the earliest moment possible.

I made the statement that the cases would be heard at the January term of the Supreme Court of California, because I then believed that upon my motion, and owing to the importance of the questions involved, the Supreme Court of California would advance them upon the calendar. I was disappointed in this, for the Attorney-General appeared in opposition to the motion and prevailed against me; hence, the cases have not been heard up to this date.

During my statement before the Assembly Judiciary Committee, a difference of opinion arose as to whether I had made a stipulation with the

Attorney-General, Mr. Marshall, that the other cases, involving the taxes for the years 1880, 1881, and 1882, should abide the decisions in the San Bernardino case. Mr. Dunn thought that there was no stipulation. I knew at the time that there had been such an agreement, but whether it had ever been reduced to writing or not, I did not know. I find in my letter-book a press copy of such a stipulation, as follows:

In the Circuit Court of the United States, District of California.

COUNTY OF SAN BERNARDINO, }
 vs. } No. 2829.
 SOUTHERN PACIFIC R. R. Co. }

It is hereby stipulated and agreed by and between the parties to the above entitled action and to the actions hereinafter referred to by number, and all recently determined by the Circuit Court of the United States, that the last mentioned actions shall abide by and be governed by the final determination of the Supreme Court of the United States in the above entitled action; and it is further stipulated that neither party will treat any of the judgments entered in said cases as consent judgments; that if necessary to avoid such treatment by the Supreme Court of the United States, the judgment in favor of the plaintiff in each of said actions may on motion of the plaintiff be set aside and judgments in each of the said cases in that event shall be entered *nunc pro tunc* of the date of the present judgments in favor of the defendants, according to the original decision of the Court, and to have the same force and effect in all respects as if such judgments had been so entered at said time. The cases referred to and which are to abide the final decision aforesaid are numbered on the calendar of the United States Circuit Court as follows: 2755, 3093, 2781, 2778, 3060, 3061, 2786, 2788, 3108, 2798, 2797, 3063, 2803, 3071, 2820, 2819, 2825, 2914, 2773, 2840, 2841, 3062, 2756, 3094, 2767, 2829, 3064, 2789, 2787, 3109, 2809, 2840, 2835, 2839, 3096, 3065, 3102, 3101, 3077, 2817, 2818, 2837, 3095, 3059, 2677, 2780, 3069, 3109, 3104, 3083, 2826, 2913, 2782, 2779, 3072, 3068, 2759, 3097, 2838, 3219, 3218, 2811.

Dated March —, 1884.

CREED HAYMOND,
 Counsel for defendants, for all attorneys for defendants.

E. C. MARSHALL, *Attorney-General, State of California:*

The case intended to be referred to stands on the calendar as 2757, instead of 2829, and the latter number was entered by mistake. This stipulation is amended according to the original intention of inserting said number 2757.

CREED HAYMOND,
 Counsel for defendants.

E. C. MARSHALL, *Attorney-General for State of California:*

No actions, to my knowledge, have been brought by the State of California to collect the taxes for the year 1887 upon the assessment by the State Board of Equalization. On the roll, the Northern Railway, the San Pablo and Tulare, and the California Pacific Companies appear delinquent, and none of these cases involve the question of Federal franchise. If a suit is brought upon either or all of said cases I will appear at once and agree that the cases shall be tried at the earliest moment possible, and afford the State an opportunity to try in either of the cases the issue whether fences were or were not included in the assessment by the State Board of Equalization for the year 1887. I am willing to stipulate that said cases, if brought, shall not only be tried as speedily as possible, but, after determinations by the Superior Court or Circuit Court, as the case may be, that the record may be prepared, and the cases hurried forward to the appellate Court for final determination with all possible speed.

CREED HAYMOND.

Subscribed and sworn to before me this twenty-eighth day of February, 1889.

[SEAL.]

E. B. RYAN, Notary Public.

J. L. WILLCUTT.

Being duly sworn, deposes and says: I am the Secretary of the Southern Pacific Railroad Company, and as such am custodian of the books and vouchers of said company, aforesaid; that as such Secretary I have the means of knowing the bonded indebtedness of said company, and through said vouchers have the means of knowing the amount of taxes paid by said company from the year 1880 to the year 1888. The average bonded indebtedness in the State of California has been during that term not less than the sum of thirty-one million seven hundred and ninety thousand (\$31,790,000) dollars.

I further aver and declare as deponent herein, that said Southern Pacific Railroad Company has paid for State and county taxes in the State of California during said time the sum of seven hundred and fifty thousand (\$750,000) dollars more than it should have paid had the property of said company been assessed and taxed like the property of individuals, where deductions are made on account of mortgages.

J. L. WILLCUTT.

Subscribed and sworn to before me this twenty-seventh day of February, A. D. 1889.

[SEAL.]

E. B. RYAN, Notary Public.

E. H. MILLER, JR.

Being duly sworn, deposes and says: I am the Secretary of the Central Pacific Railroad Company, and as such am custodian of the books and vouchers of said company aforesaid; that as such Secretary I know the bonded indebtedness of said company, and through said vouchers have the means of knowing the amount of taxes paid by said company from the year 1880 to the year 1888. The average bonded indebtedness in the State of California has been, during that term, not less than the sum of twenty-six million (\$26,000,000) dollars.

I further aver and declare, as deponent herein, that said Central Pacific Railroad Company has paid, for State and county taxes, in the State of California, during said time, the sum of seven hundred and fifty thousand (\$750,000) dollars more than it should have paid had the property of said company been assessed and taxed like the property of individuals, where deductions are made on account of mortgages.

E. H. MILLER, JR.

Subscribed and sworn to before me this twenty-seventh day of February, A. D. 1889.

[SEAL.]

E. B. RYAN, Notary Public.

G. L. LANSING.

Being duly sworn, deposes and says: I am the Secretary of Southern Pacific Railroad, and as such am the custodian of the books and vouchers of said company aforesaid; that as such Secretary I have the means of knowing the amount of taxes paid by said company on railroad lines leased and operated by it, from the year 1886 to the year 1888, inclusive.

I further aver and declare as deponent herein, that said Southern Pacific Company has paid for State and county taxes in the State of California during said time the sum of five hundred thousand (\$500,000) dollars more than it should have paid had the property on which taxes were so paid been assessed and taxed like the property of individuals, where deductions are made on account of mortgages.

G. L. LANSING.

Subscribed and sworn to before me this twenty-seventh day of February, A. D. 1889.

[SEAL.]

E. B. RYAN, Notary Public.

AFTERNOON SESSION.

MR. HAYMOND: Mr. Chairman and gentlemen of the committee, I desire to offer in evidence some documentary evidence showing the position of the railroad company from the beginning of this litigation. They are communications from myself—some newspaper articles and communications from myself—stating the position of the company. Many of them are long, and if it suits the pleasure of the committee, I will give the pages of the paper that they are in, and let the shorthand reporter take them and incorporate them.

THE CHAIRMAN: Yes, sir; there are no objections.

MR. HAYMOND: They just sustain the positions that I took this morning. I first refer to an article on page twenty-nine of my scrap-book, entitled: "The Position of the Railroad Company Stated, and why the Corporation refused to accept the valuation of the State Board of Equalization." This is made over my own signature as counsel for the company, simply to sustain what I have put in, but I want the article to go into the record.

THE CHAIRMAN: Yes, sir.

MR. HAYMOND: The article referred to is as follows:

RAILROAD TAXATION.—THE POSITION OF THE RAILROAD COMPANY STATED.—LETTER FROM THE HON. CREED HAYMOND.—WHY THE CORPORATION REFUSES TO ACCEPT THE VALUATION OF THE STATE BOARD OF EQUALIZATION.

Editor Colusa Sun:

DEAR SIR: In your issue of March eighteenth, appears an article headed "The Railroad Taxes." In the positions taken by you in that article I in the main agree, and especially do I agree to the proposition "that rich men are interested more than poor men in maintaining not only the legal but the equitable rights of property, and they are interested more in the maintenance of good government."

The article in question bears upon its face evidences of the sincerity of the writer, and deals with what the writer terms the sins of the railroad company in a spirit more of regret than of anger.

A due regard for the judgment of thoughtful men, and respect for the opinions of the public, call for a statement of the position of the railroad company relative to taxation—a position much misunderstood, but as impregnable in law as it is just in morals.

PROMPT PAYMENT OF TAXES.

For many years prior to the adoption of the new Constitution the railroad companies of California, and especially those belonging to the Central Pacific system, paid their taxes promptly, and since the adoption of the new Constitution such companies have paid without question taxes assessed upon their stations, workshops, and lands by the same tribunals which assessed the property of other persons within their jurisdiction. The taxes so paid for the present fiscal year amounts, in the aggregate, to \$250,000; and the taxes so paid by the railroad people for the years 1881 and 1882 in Colusa County amounts, as appears from the books of the tax agent of the company, to \$9,098 22, while in Alameda County the payments for the same year and purposes amounted to \$46,075 89, and in Sacramento County to \$55,075.

CASES STATED.

Since the adoption of the new Constitution difficulties have arisen which the railroad companies deplore as deeply as can any one else. The new Constitution provides a general system of taxation which affects all property within the State, except railroad property operated in more than one county. This general system in brief provides that property shall be taxed *in proportion* to its value; that is to say, that the rate of taxation shall be the same as to all property, and that all property shall be assessed in the same proportion to its value, whether that proportion be one third or two thirds of the value thereof. This provision carried out produces that equality which is the very essence of taxation. This system requires that the proportions of value shall be ascertained by a general law affecting all persons and all property within its scope. It requires that before a liability is fixed there must be notice and an opportunity to be heard and given to every person whose property is to be affected. This system gives an appeal from the Assessor to the local Boards of Equalization, elected by the people of the counties—to Boards which hold their sessions at times fixed by law, and of which notice must be given—to Boards which must transact their business openly in the presence of the people, and must proceed according to rules of evidence calculated to insure justice. This system requires the assessment to be made in the county by the Assessor elected by the people of the county, and who acts in their presence and is directly responsible to them for his actions. It prevents property from being assessed in localities distant from the place where the property is situated. This system prescribes that the mode and manner of assessment must be carefully and precisely fixed by general laws; and lastly, this system allows every owner of property to deduct from the value of the same the value of mortgages, deeds of trust, or other liens thereupon, and permits the Assessor to assess such owner only for the beneficial interest which he has in the property, *i. e.*, the value thereof after deducting the amounts of such mortgages or liens.

There are difficulties inherent in the subject which have hitherto rendered it impossible to frame laws which, under all circumstances, will distribute the burden of taxation with exact equality, but all just laws aim to accomplish, as nearly as may be, that end, and the general system adopted in the State of California contains the safeguards which experience has taught to be necessary for the protection of the citizen in his rights of property against unjust and arbitrary exactions. The framers of the new Constitution adopted another and special system, which applies alone to franchises, roadway, roadbed, rails, and rolling stock of roads operated in more than one county—not to all railroads in the State, nor to all property operated in more than one county. By this system one class of property is singled out from the mass of property, and is subjected to its operations. This special system finds its origin in Section 10 of Article XIII of the new Constitution. That section, in respect to the subject under consideration, prescribes that "the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State shall be assessed by the State Board of Equalization at their *actual* value, and shall be apportioned to the counties, cities and counties, cities, towns, townships, and districts in which such railroads are located in proportion to the number of

miles of railway laid in such counties, cities and counties, cities, towns, townships, and districts." This special system, by virtue of Section 4 of the same article, as construed by the Supreme Court of this State, prevents the owners of such property from deducting from the value thereof the value of the mortgages or liens upon the same; or in other words, while the owners of all other property in the State are only assessed for the excess of value over mortgages and liens, the owners of such railroad property are to be assessed for the full value of the property, without any reduction whatever. From this summary it will be readily apparent to all that the owners of railroad property operated in more than one county are denied any protection from the general laws, constitutional or otherwise, which:

1. Require that property shall be taxed in *proportion* to its value.
2. Require such proportions to be ascertained by a general law.
3. Require that before liability is fixed, notice and an opportunity to be heard must be given.
4. Give an appeal from the Assessor to another tribunal.
5. Require the assessment to be made in the county, and prevent its being made in localities distant from the *situs* of property.
6. Which prescribe the mode and manner of the assessment, and the rules of procedure and evidence; and
7. Which allow deductions for indebtedness secured by mortgage or other liens.

THE POWER OF THE STATE BOARD MUST BE MEASURED BY THE CONSTITUTION.

Section 10 of Article XIII of the State Constitution contains a full grant of power. It is what the lawyers call self-executing. If that section be legal and valid, the power of the State Board under it, and the limitations upon that power, must be ascertained by an examination of the section itself, for it is not within the rightful authority of the Legislature to take away any part of the power conferred by the constitutional provision. Starting with the proposition—which cannot be disputed—it is manifest, if these provisions be valid, that railroad property operated in more than one county can be assessed at any time or place which the Board may in its pleasure elect to meet, without notice of any kind to persons to be affected by its actions; that it may assess the roads at \$100,000 per mile, or it may assess them at \$1 per mile, and its action being final and conclusive; that neither the railroad companies on the one hand, even if the power is exercised to the extent of confiscation; nor the people, on the other hand, if the Board became corrupt, and should assess the property at \$1 per mile, could obtain any relief. The power of this Board under the Constitution was strongly but accurately stated by the Attorney-General of this State in his brief filed in the Supreme Court in the case of the San Francisco and North Pacific Railroad vs. The State Board of Equalization. Said the learned Attorney-General: "There is nothing in the Constitution or statutes requiring such notice—a notice of some kind to the property owner before his liability is fixed—or pointing out specifically the manner to be pursued by the Board in making assessments and fixing valuations. This being so, it may adopt such a mode of procedure as appears to it suitable and proper. If the Board has adopted no general rules applicable to all cases, then whatever manner was adopted by the Board in making the particular assessment complained of became the rule of this case. The Board have authority to make rules for its own government; *can change such rules as often as it sees fit; can adopt a new rule for each case which comes before the Board, if it desires to do so.*" In other words, the will of this Board, without regard to the forms in which that will is expressed, without regard to the evidence by which it arrives at its conclusion, without regard to the time or place at which it acts, is the law of the land.

IT POSSESSES SUPREME AND ABSOLUTE POWER

Over all the property under its jurisdiction. It may virtually exempt such property from taxation, or under the pretense of taxation it may confiscate it. We maintain that such a power vested in any tribunal is incompatible with the existence of republican institutions, and that its exercise would be subversive of the great principles which underlie our form of government. It may be here asserted, without fear of successful contradiction, that from the time of the establishment by James II of the "High Commission" to the time of the creation of the Board of Equalization in California, no tribunal has existed either in England or America which even *claimed* the right to deal with life, liberty, or property subject to no rules except those of its own pleasure. Nearly two centuries have elapsed since the power to deprive a person of property, except in accordance with the general laws of the land, has been asserted in any country where the English language is spoken. It is true that in some States laws exist for the ascertaining of the value of railroad property by tribunals differently constituted from the tribunals which ascertain the value of other property, but such tribunals have jurisdiction over all railroad property. They must proceed upon notice; the manner of their proceeding is regulated by laws analogous to the laws governing other tribunals exercising like powers; laws which throw around such property every protection which the laws of the land give to property in general. It is against this special system—under a claim to the protection of general laws—that the railroad company has taken its stand. It relies for its jurisdiction upon rightfulness of its cause—the decisions of the Courts which will be pronounced when the case shall be heard upon its merits—and upon the enlightened judgment of a people jealous of those rights which government was ordained to protect and preserve.

MONEY TENDERED.

The railroad company seeks in this matter to violate no obligation which it owes to the public. In the performance of the great office which it has taken upon itself, of protecting the property of its shareholders, whose trustee it is, against the exercise of unlawful power, it has kept itself clear of the mere question of dollars and cents by tendering to every county *more than once* a tax in excess of that paid by other citizens of the same county upon their property. Nor will the company stop at this, but in each case which has been or shall be brought against it will for a like purpose waive all questions of the legality of the tax and agree that a judgment may go against it for a tax upon a valuation higher than was ever affixed to such property in the United States. It does this in the consciousness that the class to which you refer is standing anxiously by, seeking to make political capital out of any false step the company might take in the premises. It does this in discharge of equitable obligations, although there be no law to compel their performance. It has paid to San Diego County \$25,000, not because it has been assessed, but because, if assessed, there would be that much due to that county. The Directors of the company never will, until they have the judgment of the highest tribunal in the land, allow one dollar of the property of the stockholders, whose trustees they are, to be taken from its treasury in violation of the fundamental laws of the land. They will pay to the counties, even if the company be successful in this litigation, a tax for the last two fiscal years which, beyond all question, will exceed the amount legally chargeable against them. Its Directors appreciate the value of an enlightened public opinion to aid them in the discharge of onerous duties; and none more than they feel the importance of being right, to the end that such aid may be secured. Against the arbitrary power conferred upon this State Board of Equalization the railroad company comes into the Courts of the country and interposes as shield between the property of its stockholders and the assaults of this power.

FEDERAL CONSTITUTION DEPENDED ON.

The provisions of Section 1 of the fourteenth amendment to the Federal Constitution. That section declares that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive *any* person of life, liberty, or property without due process of law, nor deny to *any* person within its jurisdiction the equal protection of the law."

This may be summed up in a single sentence: "The equality of all, whether rich or poor, high or low, before the law." Nor shall any State deprive any person of life, liberty, or property without due process of law. Such is the language of the amendment, and it applies to the action of the State, whether the State speaks through her legislative assembly, or through her people in their original capacity, whether through acts of the Legislature, or by the voice of constitutional enactments. "The principal embodied in the clause quoted," says Mr. Justice McKee, "underlies all forms of government by law. * * * The Legislature (the State) has no power to take away a man's property, nor can it authorize its agents to do so without first providing for personal notice to be given to him, and for a full opportunity of time, place, and tribunal to be heard in defense of his rights. This constitutional guarantee is not confined to judicial proceedings, but extends to every case in which a citizen may be deprived of life, liberty, or property, whether the proceeding be judicial, administrative, or executive in its nature." And Mr. Justice McKinstry, in the same case, *Mulligan vs. Smith*, holds that any system of taxation which does not provide for notice or process by means of which the property owners are to be subjected to the judgment of the tribunal which fixes the tax or assessment is void.

Says Earl, Justice, in the well reasoned case of *Stuart vs. Palmer* (74 N. Y. 191):

"It is difficult to define, with precision, the exact meaning and scope of the phrase 'due process of law.' Any definition which could be given would probably fail to comprehend all the cases to which it would apply. It is probably wiser, as stated by Mr. Justice Miller of the United States Supreme Court, to leave the meaning to be evolved by the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require, and the reasoning on which such decisions may be founded. (*Davidson vs. Board of Administrators of New Orleans*, 17 *Alabama Law Journal*, 23.) It may, however, be stated generally, that due process of law requires an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights. A hearing or an opportunity to be heard, is absolutely essential. We cannot conceive of due process of law without this."

The learned Judge continuing, says:

"In *Ireland vs. City of Rochester* (51 *Barb*, 414), Judge James C. Smith, speaking of the imposition of assessments, says: 'It is in the nature of a judicial proceeding against them, and its effect is to take their property for public use. * * * It is a plain principle of justice applicable to all judicial proceedings, that no person should be condemned or shall suffer judgment against him without an opportunity to be heard,' and he says that an Act assessing persons without notice, transcends the power of the Legislature, and is itself void. In the matter of *Ford* (6 *Lans*, 92), Judge Gilbert says that the duties of Assessors in making assessments are of a judicial nature, and that it is a fundamental rule that in all judicial or quasi judicial proceedings, whereby the citizen may be deprived of his property, he shall have notice and an opportunity of a hearing before the proceedings can become effectual. That Assessors act judiciously, see also *Barhyte vs. Shepard* (35 N. Y. 338), and *Clark vs. Norton*, (49 N. Y. 243). In *Overing vs. Foote* (65 N. Y. 363),

Mr. Commissioner Reynolds says: 'The general theory under our laws for taxation of property, is that the citizen to be affected must have some sort of notice of the proceeding to be had against his property, and that in some form he may be heard, if wrong is apprehended, before any portion of his estate is seized for the support of the government.'

Judge Earl in the same opinion quotes with approval from Judge Cooley, the following: "We should say that notice of proceedings in such cases, and an opportunity for a hearing of some description, were matters of constitutional right. It has been customary to provide for them, and it is not to be assumed that constitutional provisions, carefully framed for the protection of property, were intended or could be construed to sanction the legislation under which officers might secretly assess one for any amount in their discretion, without giving him an opportunity to contest the justice of the assessment."

Judge Earl concludes his opinion upon the topic in the following significant language: "It is not enough that the owners may by chance have notice, or that they as a matter of favor have a hearing. *The law must require notice to them, and give them a right to a hearing and an opportunity to be heard.* It matters not upon the question of the constitutionality of such a law, that the assessment has, in fact, been fairly apportioned. The constitutional validity of the law is to be tested, not by what has been done under it, *but by what may by its authority be done.*"

The case of *Stuart vs. Palmer*, from which I have quoted at length, was decided by the Court of Appeals of the State of New York, but it is authority in this State, having been approved by the Supreme Court of California, in the case of *Mulligan vs. Smith*, lately decided. The terms "life, liberty, and property," comprehend every right known to the law. (*Cummings vs. Missouri*, 4 Wall. 320.) In *Munn vs. Illinois* (94 U. S. 123) it is held that while this clause in the fourteenth amendment is new in the Constitution of the United States as a limitation upon the powers of the State, it is old as a principle of civilized government, and as the Constitution contains no definition of the words used, their significance must be determined by ascertaining the effect which usage has given when employed in the same or like connection. In the *Sinking Fund* cases (99 U. S. 718), Mr. Chief Justice Waite delivering the opinion of the Supreme Court of the United States says: "The United States * * * are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, *but equally with the States, they are prohibited from depriving persons or corporations of property, without due process of law.*"

THE EQUAL PROTECTION OF THE LAWS.

Nor shall any State "deny to any person within its jurisdiction the equal protection of the laws." This, too, is the declaration of the fourteenth amendment. This amendment is

THE SUPREME LAW OF THE LAND,

Anything in the Constitution or laws of any State to the contrary notwithstanding. In construing constitutions we are not confined to narrow or technical rules of law. The greatest constitutional lawyers of this country have been those who, possessing but moderate knowledge of the technical learning of the law, have brought to the consideration of the subject a thorough knowledge of the object and purposes of rightful governments, and who, with broad and enlightened minds, have applied strong common sense rules to the interpretation of fundamental laws.

PEOPLE ABLE TO GRASP THE SUBJECT.

The American people, by reason of their participation in the affairs of government, are able to grasp and comprehend a constitutional question. It has not been unfrequently the case that the educated masses arrive at a correct solution of such questions in advance of the mass of legal profession. Notably so was this the case upon the greatest constitutional questions ever raised, namely, of the relations of the Federal and State governments to each other, and of the relation of the people of the Union to each other. Upon these questions lawyers and Judges differed from the beginning, and after years of discussion were as far apart as ever. Yet the people seized upon these questions in the supreme moment and determined them with such accuracy that now no one questions the justice and wisdom of that determination. Hence it is that such questions may always be addressed with propriety to the people, and hence it is that the railroad company may securely rest upon its proper action, in lawfully resisting a violation of the Federal Constitution. Hence it is that it may in confidence look beyond the misrepresentations and misapprehensions of the hour to the time when the sound and just judgment of the people will approve and vindicate its action.

I think you may be assured that there is not an intelligent citizen of your county but upon reflection will say: "The railroad company has within the county been denied the equal protection of the law." Under the laws the property of every person in that county found protection against any unjust action of the Assessor in an appeal to the local Board of Equalization. This protection was denied to the railroad company. The railroad property, under the special system established, is taxed to support the county government, but is denied the protection of that government.

SUPPOSE THE CASE YOUR OWN.

To illustrate, and to bring it home to you, and to your people, let us suppose the Constitution had established, as it has, a general system of taxation, and then had provided that every tract of land within the County of Colusa should be assessed, not under that general

system, but by a State Board, the members of which Board were elected for four years, and from distant parts of the State; that such assessment might be made without notice, without regard to any rules of procedure or evidence, under no law save the will and pleasure of the Board; that from such assessment there was no appeal. Suppose this case—apply it to yourself—and then you have the case of the railroad company. Let me ask if the supposed case existed, whether there is a single man in your county who would willingly submit to such a system? I do not think so. I might go further and say, if he did he would be unworthy to be a citizen of this country. The claim of the railroad company here presented may be put in a single sentence: It claims the right when its property is assessed for county purposes, to receive the benefit and protection which the county government affords to every other person within its limit. It claims the right to have its property valued, for the purposes of taxation, under the same rules of evidence, and by the same modes of procedure, which are applied in the valuation of other property. "Of the fourteenth amendment," says Judge Field, in the Virginia Jury cases, "it assures to every one the same rules of evidence and modes of procedure."

Commenting upon this decision, and upon the case of the *People vs. Weaver* (10 Otto, p. 539), John Norton Pomeroy, Professor of Law in the Hastings Law Department of the University of California, and one of the most learned men in his profession, says: "Upon the same principle a State law sanctioning the imposition of unequal burdens must fall before the constitutional amendment."

A FULL EXPLANATION.

For more than one year last past the railroad company has been trying to get this matter before the Courts of the county upon its merits; over a year ago it commenced proceedings in the United States Courts; an objection was taken to the form of the action by the parties representing the people. That objection was sustained. In every proceeding had since, the attorneys have refused to make the case upon its merits, but have objected to the form of the action.

When the time came that the property might be sold by the Tax Collector, proceedings were instituted, in the Superior Court of San Francisco, against the Tax Collector of each county to enjoin the sale. But in each case, as you will see by the complaint on file in your Superior Court, it was averred that the plaintiff in those actions, "while then and now denying all liability upon said pretended assessment, and claiming that all the proceedings had in relation thereof were in violation of law and the rights of the plaintiff, did tender and offer to the said defendant—the Tax Collector—the sum of (this blank in each case was filled by an amount equal to 60 per cent) in United States gold coin, in payment of the taxes which would be due upon said property if it had been assessed in the manner provided by law (that is, by the general law), and that the said plaintiff then was and ever since has been, and still is, ready and willing to pay the same; that the amount so tendered was and is in excess of the full amount of said State, county, township, and district taxes, which would be due upon said property, if it had been assessed as provided by law, and is and was in every respect in excess of the full amount which the defendant in that event would have been entitled to receive for such taxes; and plaintiff now brings the said sum (stating the amount in each case in accordance with the facts, and in your county for the year 1881, at \$5,152 72) into Court, and offers the same to defendant, and if refused by defendant, subjects the said sum to such orders or judgments as the Court may make in the premises."

MONEY OUGHT TO HAVE BEEN ACCEPTED.

Now I submit to you and all candid men, if it would not have been the rightful policy of the parties representing the State to accept this money, have the Court make an order—which Judge Waymire will tell you he was ready to make, and to which we had no objections—that plaintiff pay the sum into the county treasuries, and then to have met the case as to the balance, upon its merits, and have the question determined free from all embarrassment as to the sum already paid. For some reason, which I never have been able to comprehend, the attorneys representing the State refused to act upon this order, but moved to dissolve the injunctions, taking an objection to the form of action, which objection Judge Waymire sustained. And here let me say, a serious misapprehension exists as to

WHAT JUDGE WAYMIRE'S DECISION WAS.

Judge Waymire's decision is published in full in the San Francisco "Chronicle," of March twelfth, on the fifth page. In that opinion Judge Waymire says that "the complaint not only fails to show a clear case for equitable relief, but it shows a clear case where no equitable relief is necessary." In other words, Judge Waymire holds that upon the admitted facts the tax was illegal and void upon its face; that a sale for such a tax would not cloud the title to the property, and that equity had no jurisdiction, there being an ample remedy in law. With Judge Waymire I do not agree. I believed when I filed the complaints, and still believe, that under the decision of the Supreme Court of this State in the case of *Porter vs. Pico* (55 Cal. p. 165), a party owning property had a right to enjoin a sale, even though the process under which the officer acts is void upon its face. In *Porter vs. Pico* (55 California Reports, p. 165), it is clearly held that an injunction will lie to restrain a sale by a public officer, although the authority under which the officer acts is void upon its face, and the sale would, therefore, be ineffectual to pass the title to

the purchaser. This decision went upon the grounds that, although the sale would be ineffectual to pass the title, yet it would be sufficient to cast a doubt upon the validity of the title, and that the owner was entitled to an injunction to prevent the injury caused by such doubt. This seems to be a common sense view of the matter, and it is the view taken by our Supreme Court. But the very moment Judge Waymire made this decision, the remedy, if his decision was correct, was clear. Under a law passed last winter the writ of prohibition, as to Superior Courts, was enlarged so as to run against executive and ministerial officers exceeding their jurisdiction. The revenue laws provide that if there is any illegality in a tax the Tax Collector shall not sell; therefore, if we assume that Judge Waymire was correct, and that the tax was illegal and void, our remedy was not by injunction, but was by prohibition.

EXCESSIVE VALUATIONS.

One single illustration will show how excessive has been the valuation of this property. The Southern Pacific Railroad runs through a portion of San Diego County which is a desert. The right of way is granted by the Federal and State Governments, over the Federal and State lands. These lands could not be sold to-day for \$1 an acre, and yet the land of the railroad company there has been assessed for nearly *one hundred* dollars per acre, while its road across the desert has been assessed for 25 per cent more than it would cost to replace it.

I agree with you that the directors of corporations should be held to the strictest accountability; that all good citizens should maintain the laws, "the legal and equitable rights of property, and the cause of good government," but I submit, in conclusion, that when, in the defense of the property of its shareholders, the directors of a corporation assert the supremacy of the Federal Constitution, and in the Courts uphold the grand central idea of that Constitution—"the equality of all before the law"—that such directors are in the faithful discharge of their trusts and of the highest duties which devolve upon citizens of a free country.

Respectfully yours,

CREED HAYMOND,
Associate Counsel of the Central Pacific Railroad Company.

MR. HAYMOND: Then the article on the back of that page headed, "Railroad Tax Suits. Creed Haymond's Reply to the State Officials. The Controller's Figures, The Railroad's Assessment Compared with that of Other Corporations, Etc. A Speedy Settlement Desired." This article is signed by myself, and was published in all of the papers of the State. These articles are not offered for any other purpose than to show the position of the company. The article reads as follows:

Colonel Creed Haymond has submitted the following in reply to the opinions of Governor Stoneman, Attorney-General Marshall, and Controller Duinn, in relation to the railroad tax suits:

SAN FRANCISCO, CALIFORNIA, November 10, 1883.

Governor GEORGE STONEMAN, Sacramento:

MY DEAR SIR: I find upon my table this morning your note of November 8, 1883, in answer to a proposition made to yourself relative to an adjustment of the railroad taxes. I also find copies of the opinion of the Attorney-General and Controller published in the morning paper of this date. Perhaps it will be unnecessary for me to state that I am startled and surprised at the views expressed by the Attorney-General and Controller.

The Attorney-General sees in the proposition an attempt not only to subvert the Government, but to overthrow civilization itself. My friend, the Attorney-General, also affects to see in the proposition a menace to the Government, and deduces from it the conclusion that the railroad companies are arrogating to themselves sovereign powers.

I must acquit you of sharing in any of these fears, and I regret that any action of mine in relation to the subject-matter should have excited in the mind of the Attorney-General any uneasiness as to the perpetuity of the institutions under which we live, or should have led him to conclude that civilization has about reached its end. I am sure that in the conference between your Excellency, and the Attorney-General, and myself, there was nothing in my manner to arouse such fears. It is true that I may have approached the presence of the powers that be without the fear with which the Hindoo approaches his idol, but I am certain that I did it with his awful reverence.

The Controller overwhelms us with an array of figures which set at defiance all rules of mathematics, and from which he has produced the most startling results. He finds that if the adjustment is made upon the basis suggested in my communication, the State and counties will lose the enormous sum of \$1,014,626 10. The truth is, that computed up to the first day of November, 1883, the total amount claimed by the State and counties and remaining unpaid for the years 1880, 1881, and 1882, including all penalties and interest, and attorney's fees at 10 per cent, is but \$1,321,131 22, much the greater portion of which the companies propose to pay. I beg to suggest that if the figures in the Controller's office

support the statements made by the Controller and show as large a balance as he claims to be due, vast sums of money paid by the railroad companies upon the taxes in question have never been reported to the Controller, or that his system of bookkeeping is as inaccurate and worthless as the array of figures which he presents in his communication to you.

The Attorney-General thinks the settlement of a disputed claim, between a citizen and the government, as to dollars and cents (say, advisedly, dollars and cents alone, for in all propositions it was understood that the contest on principle should be determined by the Supreme Court of the United States), would shake society to the center and leave government a wreck. From the beginning of the Government of the United States, under the administration of Washington and Hamilton, down to the settlement with the Spring Valley Water Company and the San Francisco Gas Company, under the administration of Marshall and Dunn, compromises and adjustments of conflicting claims between subjects (I but follow you in using this term) and governments, have been of every day occurrence. Many have been the causeless fears and sinister auguries in the past, but the government, like the visible frame of nature, still endures to be as lasting, we trust, as the sunny Isle of Greece, of which it has been said, "Eternal summer gilds them yet."

The railroad companies have adjusted with a great many counties their taxes for the three years in question, and I have yet to learn that any great amount of dissatisfaction has been expressed with those settlements, and I am sure, neither in civilization nor in good government, do those counties rank below their sisters.

I think the circumstances do not warrant the forebodings of General Marshall. I have confidence that his fears are unfounded, and faith that for all time to come civilization will advance, the Government of the Union still exist, filling its great destinies, giving not only the equal protection of the laws to all persons within its jurisdiction, but by its example assuring the same boon to all the peoples of the earth. I cannot believe that the hopes of mankind, or the greatness, glory, and fortunes of my country rests upon so slight a foundation that the appeal of any person or corporation to the established Courts to determine a liability for taxes will imperil the fortunes of the one or blast the hopes of the other.

A controversy between yourself and the railroad company upon the question as to whether its property was overvalued or not would not be appropriate. We tendered to the State of California this issue, and offered to prove on the trial of the cases which have been tried in the Circuit Court, that the valuations were excessive, and out of all proportion to the valuation fixed on other property. The State of California, represented by her Attorney-General, as I am advised, refused to meet this issue; this action should close the controversy on that point. The State Board of Equalization, the tribunal intrusted by law with fixing this valuation, admitted, in 1882, that its valuation for the two preceding years were erroneous.

The Controller, in his article, singles out the Southern Pacific Railroad Company, and compares its valuation with the valuation fixed upon the Spring Valley Waterworks. The Southern Pacific Railroad Company has never earned or paid a dividend, and for many years, indeed up to 1882, did not earn its operating expenses. The Spring Valley Water Company, the Controller tells us, was assessed for the fiscal years 1881-82, at \$5,740,770.

The Controller must have known that this property could be sold at auction, on thirty days' notice, in the City of San Francisco, for a sum nearly, if not double, the amount for which it was assessed. The Controller must have known that the property in question has been paying large dividends upon its capital stock.

Authorized by competent authority, I made a proposition to sell to the State of California the Southern Pacific Railroad, for 10 per cent less than it was valued at for the purpose of taxation in the years 1880 and 1881. That offer, I have no doubt, remains open not only to the State of California, but to any person who desires to accept it.

From the beginning of the litigation between the railroad company and the State, every effort has been made by the company to have that litigation determined as speedily as possible, and in almost every instance these efforts have been met by technical objections to the form of proceeding, and delays of every kind have been interposed by the State authorities.

A partial answer to the Controller's claims of enormous sums in interest is found in the fact that the company tendered, without any qualifications, 66 per cent of these taxes to the State and counties and brought the money into Court, and has ever since kept its tender good. I am also advised upon this subject that leading counsel employed by the State and counties have held that there is no such liability.

The company, although advised by eminent counsel that the new Constitution virtually exempted its property from taxation, has at all times been willing, notwithstanding that exemption, to contribute its fair and just proportion to the support of the government of the State, and of the various counties through which its road runs. We have not sought to compromise any legal claims, for, in our judgment, no such claims exist.

The company has been willing at all times, notwithstanding its success in this litigation, to pay a fair and just rate of taxation.

I submitted to your Excellency statements showing amount of revenue collected from railroad companies in other States—in States where the tax is levied upon income, and in States where the tax is placed upon an ad valorem valuation. I have shown you that the amount which the company voluntarily proposed to pay upon a single track road is from 50 to 100 per cent in excess of the amounts paid by double or four track railroads in other

States, whose incomes are from twice to five times greater than that of the Central Pacific. As that portion of my communication has not been published by you, I herewith append articles contributed to the press of this city which show the facts.

In conclusion, permit me to say that I have read with satisfaction this paragraph in your letter: "The State is a sovereign power, and in order to secure the respect due to that power, must administer the laws justly and equally to all its subjects."

The great truth so aptly expressed by you, lies at the foundation of free government. The sad and bloody experience of ages, however, has demonstrated that States, though sovereign, have not always been just. "From Runnymede to Appomatox, the jewel for which civilized man has fought has been the law of the land, and equality before the law."

In order that no State in the Union should ever do that which, in your judgment, would cause it to lose the respect of all good men, an amendment was adopted to the Federal Constitution which provides, among other things, that no State shall deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. The railroad companies in question do not seek to have the revenue laws administered unjustly or unequally, but in respect to this very matter have always maintained that the system of taxation adopted in this State denies to the citizens of the United States, who own this property, the equal protection of the law, and violates not only the constitutional provision in question, but the fundamental principles of free government.

It may be in good taste for the Attorney-General and Controller of a great State, in a public document, to charge citizens who, under the shield of the Federal Constitution, seek the protection of the Courts, and who are willing to abide by their judgments, with arrogance and lawlessness. The citizens of this country who own this property have been reared in another school. They have been taught by a brave and hardy ancestry that to resist an illegal tax is to obey the laws of the country; that to enforce and uphold the provisions of the Federal Constitution is commendable and creditable. At the same time they have no quarrel with those whose education leads them to different conclusions.

My clients have implicit faith and confidence in the people of this State, and feel sure that the railroad companies will not, in their good judgment, take harm by reason of the fact that the shareholders, in the exercise of a right guaranteed to all, have asked that the Supreme Court of the United States should pass upon the question, whether the provisions of the Constitution of the State of California, relative to railroad taxation, deny to such shareholders the "equal protection of the law." No good citizen at this day will desire to overturn the true principles of Republican government, or esteem it a crime for any other citizen to assert the supremacy of the Federal Constitution. While regretting that your conclusions are that there is no power reposed in the Executive to adjust the matter so far as dollars and cents are concerned, upon equitable principles, I beg to return to your Excellency the thanks of my many clients for the attention you, at their instance, have given the subject, and to express the hope that a speedy settlement of the vexed question may be reached.

Very respectfully,

CREED HAYMOND.

MR. HAYMOND: Then I offer in evidence an article from the "Chronicle" of November 12, 1883, headed "The Railroad Taxes." It reads as follows:

THE RAILROAD TAXES.

The State officers having declined the offer of the railroads to compromise their taxes, Mr. Haymond, one of the attorneys for the railroad, replies in a long letter intended to be sarcastic, but which is certainly more rhetorical than business like. In fact, the correspondence on both sides seems designed more for political effect than to serve the State. The Controller, by omitting to credit sums already paid by the railroads on account of their taxes—and which, of course, will have to be credited—and of figuring interest and penalty without allowing for such payments or for tender of payments, makes a statement of \$2,419,593 27 due. The railroads are credited with having paid only \$320,810 12, while they say they have paid \$1,200,000, and Mr. Haymond claims that they owe for the years 1880, 1881, and 1882, not to exceed \$1,321,131 22, interest and all, admitting the tax to be legal, which of course, he does not. This difference in figures indicates loose bookkeeping somewhere.

The Controller gives the following as a statement of the total taxes levied upon the railroads:

1880	\$488,588 20
1881	548,065 83
1882	408,151 22
	\$1,444,805 25

We omit the taxes for 1883 (\$600,807 42) as yet not in litigation. The railroads proposed to pay on the basis of 1882, which would make the amount payable \$1,297,965 77. The difference is only \$146,838 48. But the State authorities very properly declined to accept the offer, because it involves a reduction of the tax, and is an admission by officers who have no power and no right to make such an admission that the assessments for 1880 and

1881 are too high. Now, this is a plain proposition, and Mr. Haymond has not attempted to answer it. He says some members of the State Board of Equalization admitted that the assessments of 1880 and 1881 were higher than they should have been or would have been but for the understanding the Board had before the decision of the Supreme Court, that they could raise other assessments to correspond. What does such an admission amount to? It does not express the views of the whole Board, and if it did, it was probably carried out by making the assessment of 1882 so low as to make the general average for the three years correspond with the views of the Board. It is simply absurd for the railroads to say they will keep the State and counties out of their revenue, because they have been assessed 10 per cent too high. That is all it amounts to. They offer to pay \$1,297,965 77 out of \$1,444,805 25, but refuse to pay the residue of \$146,839 48 for fear of conceding the assessments of 1880 and 1881 to be fairer assessments. For the three years the average assessed tax is \$481,601 75; as offered by the railroads, it is \$432,655 19; the difference is \$48,946 56—about 10 per cent. There is, perhaps, not a taxpayer in the State whose tax does not vary more than this. If this is a justification for the refusal to pay taxes, the State will be compelled to cease attempting to collect its revenue.

To an ordinary observer, the conduct of the railroad authorities appears altogether insincere in this matter. The indication is very strong that they do not want to pay at all, and merely make offers which they know cannot be accepted for effect upon public opinion, to excuse their delinquency. It is not, probably, that they are merely fighting for a difference of 10 per cent of their taxes. If they are sincere, why don't they offer the full tax? Mr. Haymond's reference to the settlement with the gas and water companies is unfortunate. Those companies did not obtain a reduction; they paid the tax in full, although their assessments were much higher for 1880 and 1881 than for 1882. No matter how the decision of the Supreme Court may go, the railroads cannot do business in this State without contributing their portion to the support of the government. A voluntary payment would be much better for them than any number of favorable decisions.

MR. HAYMOND: Then an article in the "Chronicle" of November 13, 1883, in this scrap-book, and then the "Chronicle's" response to that, November thirteenth. These articles relate to the proposition which I stated this morning—that the article had publicly made, and which had been accepted. They read as follows:

THE TAX CASES—WHAT THE CENTRAL PACIFIC PROMISES TO DO.

To the Editor of the "Chronicle":

SIR: I note your editorial to-day (Monday, November twelfth), commenting upon my reply to Governor Stoneman and through him to the letters of Attorney-General Marshall and Controller Dunn, both of which letters were published in the daily papers of this city.

You say that the correspondence on both sides seems designed more for political effect than to serve the State, and that much of my reply is irrelevant to the question involved. It may be true that much of my reply is irrelevant to the question involved, but it certainly was not irrelevant to the matters contained in the communications in question. It would not be becoming to me to reply to State officers to deal with their communications as irrelevant, or to assume that they were intended for political effect, instead of to serve the interest of the State. I replied to those communications calmly and temperately, stating fairly and in sincerity the position of my clients.

You seem to doubt the sincerity of the proposition made by the companies. Let me assure you that we have made many propositions to adjust this unfortunate difficulty, some of which have been rejected, and some of which have been accepted. In no case where there was an acceptance have we failed to perform what was offered, in letter and in spirit.

The fact that but thirty-two counties were interested in these matters, and that only thirteen or fifteen took interest enough in the prosecution of the cases to appear in answer to the summons of the State authorities, is satisfactory evidence to me, and ought to be to everybody else, that the position of the railroad companies is becoming understood, and that in the good judgment of the people no very great fears are entertained of a loss to the State or counties, whatever may be the result of the litigation.

From the tone of your article you make us appear to complain that we are assessed 10 per cent too high. It is needless for me to repeat that the assessment upon the single track railroad is from 50 to 100 per cent higher than any railroads in the United States have been assessed at. It is needless for me to repeat that a railroad, the net earnings of which do not exceed \$1,500 or \$1,600 per mile, cannot afford to pay from those earnings a tax of nearly \$700 per mile.

I, however, do not propose to take up your space or time in an argument to prove the sincerity of the companies in all offers made.

In the editorial referred to you have stated what you consider a fair basis of settlement. You urge that if it is a matter of principle with the railroad companies they ought not to stand upon a few thousand dollars one way or the other. As an evidence of the sincerity with which the railroad companies which I represent have acted in this matter, and of

their entire good faith, I now offer to adjust the disputes for the years 1880, 1881, and 1882 upon the basis of your figures, and that upon the payment by the companies upon the basis suggested by you all suits shall be settled and dismissed, except those which have been, or are to be, appealed to the Supreme Court of the United States, and that we allow those cases to stand, in order that the principles at issue may be determined, agreeing, whatever may be the result in these cases, to adjust them in the end upon the same basis.

Permit me to say that from the beginning I have never doubted, and do not doubt now, the result of this litigation. I have confidence enough in my opinion to desire that at least one or two cases shall be kept open for the decision of the Supreme Court of the United States.

Very respectfully yours,

CRED HAYMOND.

SAN FRANCISCO, November 12, 1883.

["Chronicle," November 13, 1883.]

THE LATEST PROPOSAL.

The latest proposal of the railway monopoly for the adjustment of its taxes due to the State and certain counties, under the assessment of the years 1880, 1881, and 1882, as made by the State Board of Equalization, will be found in a letter from the monopoly's counsel, Creed Haymond, to the "Chronicle," in another part of this paper. This letter was prompted by an editorial in Monday's "Chronicle" headed "The Railroad Taxes." In that article we presented the Controller's statement of the taxes levied on the monopoly's railroads for the three years next preceding 1883, as follows: For 1880, \$448,588 20; for 1881, \$548,065 83; for 1882, \$408,151 22; total for the three years, \$1,444,805 25. All of these taxes that are now unpaid, the monopoly, through its counsel, Haymond, proposed on the twentieth ultimo, in a communication to the Governor, to adjust with the State and counties "on the basis of the valuation fixed by the State Board of Equalization for the year 1882." This proposal was rejected for want of any authority in the Governor to entertain it, and because, as we stated in Monday's "Chronicle," its acceptance would involve a reduction of the taxes, and be an admission by officers who have no power to make such admission, that the assessments of 1880 and 1881 were too high. The State Board of Equalization, acting in 1880 and 1881, and no other officers in the State had the authority, by the Constitution and law, to make these assessments, and no future Board has power to abate any part of the tax levied under those assessments, any more than the County Boards could abate the taxes levied by a preceding County Board, due and unpaid. In this state of the case, the monopoly, through its counsel, made the offer to pay for the three years on the basis of the valuation of 1882 set on their property, which would be \$1,297,965 27, instead of the \$1,544,805 25 assessed and levied by the State Board. The abatement they ask amounts for the three years to \$146,839 98, or about 11½ per cent. The average yearly tax for the three years, as assessed by the State Board is, as we stated yesterday, \$481,601 75. The average which the monopoly's counsel is willing to settle on is \$432,655 19. The difference in average, upon which they are holding out, is \$48,945 50, or about 10 per cent (a little more) less than the State's average. We said yesterday, and we repeat here, that this difference is but a small amount for the railroad company to stand out for, if they are sincere in their wishes for a fair settlement of these taxes. It is probable that ten thousand taxpayers have quite as good reason as this corporation has for thinking their taxes 10 to 15 per cent too high every year; but if they should all take the stubborn course the railroad has taken, and refuse to pay for three years, it is easy to see that the State and county governments would be involved in bankruptcy, and political chaos ensue.

Mr. Haymond, as counsel for the monopoly, now "offers to adjust the years 1880, 1881, and 1882, upon the basis of your (our) figures," and he assents that on this basis, "all suits shall be settled and dismissed, except those which have been, or are to be, appealed to the Supreme Court of the United States." These cases he would have "stand, in order that the principles at issue may be determined, agreeing, whatever may be the result in those cases, to adjust them in the end upon the same basis." What he offers is simply this: To pay the taxes for 1880, 1881, and 1882, as they were assessed. That is, for the three years, \$1,444,805 25, or \$146,839 48 more than the offer made to the Governor on the twentieth ultimo, excepting only as to such counties as have or may have cases on appeal to the Supreme Court, and as to them, even if the cases shall go against the railway, to settle with them on the same basis, as with the others, and with the State. The proposal says nothing about the 10 per cent penalty, and interest on the taxes due and unpaid. Everything demanded by the State law, but these two points, is surrendered, with the additional reservation, touching the principle the Supreme Court is to decide, namely, whether our Constitution, which taxes mortgages on railways, but not on other property, is in conflict with the fourteenth amendment or not.

This proposition seems to be a reasonable one. If it is carried out, the railroad company will pay the full amount of the taxes levied by the State Board of Equalization in 1880, 1881, and 1882. It is true that the corporation does not consent to the payment of interest or penalties, but in view of the fact that very able lawyers not friendly to the monopoly consider the tender of a part of the taxes by the agents of the company, as relieving them from penalties and interest, it is more than doubtful if they could have been recovered even by tedious and expensive litigation. Under the circumstances it seems to be the part

of wisdom for the authorities to accept this latest proposal. They will surrender no principle, and will be but following the generally approved precedent set in the settlement of the litigation of the gas and water companies of this city. The State will collect the full amount of the taxes levied by the State Board for the three years in litigation, and relieve the embarrassments of the State and numerous county treasuries. The determination to press the settlement of the question whether the State Board of Equalization has the right to assess railroads in the manner prescribed by the Constitution should, however, not be lost sight of, and the case now before the United States Supreme Court should be pressed to a decision as speedily as possible.

MR. HAYMOND: Then I offer in evidence an article from the "Colusa Sun," of November 24, 1883, headed "Railroad Taxation," and my reply to Mr. Green, who had discussed the matter. It reads as follows:

RAILROAD TAXATION.

The writer of this owes A. Montgomery, a California millionaire, a sum of money, say \$2,000, on which he pays interest, and if he claims a reduction on account of any mortgage, the Assessor puts in Montgomery's interest in the property we hold, so the State gets the taxes in any event on the value of the property, without any regard to ownership or any incumbrance on it. Now, to place the railroad company and its creditors on an exactly even footing with the writer and Alexander Montgomery is all he wants. We think that Mr. Haymond knows that if we had all the power of all the Czars and all the Kaisers in Christendom, we would not exact one cent more of the railroad company than that which, after a careful and candid examination, appears to be just. If we are not just in any matter, any gentleman can have the use of our columns to go before the same readers to show wherein we fail. It does not set us back any to be proved in error. All men err, but it is not every one who can acknowledge an error for truth's sake, when satisfied that one has been made.—[Colusa Sun, November seventeenth.

Nor shall any State deprive any person of life, liberty, or property without the process of law, nor deny to any person within its jurisdiction the equal protection of the law.—[Fourteenth Amendment.

Editor Sun:

I note in your issue of November seventeenth, an editorial entitled "Railroad Taxes," from which the article first above is extracted.

You are right when you assert that I know if you had all the powers of the Czars and Kaisers in the world you would not exact one cent more from the railroad company than that which, from a careful and candid examination, should appear to you to be just. An intimate acquaintance, extending over a quarter of a century, with you, gives me such confidence in your judgment and integrity that I would be willing to-day, the State consenting, to withdraw the tax cases from the Courts, submit them to you for determination, and accept your judgment as a finality.

I believe the railroad company is right in the position which it has taken, and I have yet to see one fair-minded man who, after understanding the facts, does not approve its course.

To resist an illegal tax is not only the right, but it is the duty of every citizen. I do not mean by this that it is the duty of a citizen to resist a tax because it is slightly excessive or out of proportion; what I mean is this: that every tax which is levied in violation of accepted fundamental principles of government should be resisted, and that to resist such a tax is as great a virtue as to bear arms in defense of a lawful and just government.

You give an instance above, and say that all you want to do is to place the railroad company and its creditors on exactly an even footing with yourself and Alexander Montgomery. That is all the railroad company wants. To illustrate: You own a farm worth \$4,000; you owe Mr. Montgomery \$2,000; under the Constitution of the State of California you are assessed upon that property \$2,000, and Mr. A. Montgomery is assessed for \$2,000. If you pay the tax upon the \$4,000 you are entitled to deduct one half of the amount paid by you from the debt which is due to Mr. Montgomery. There is no doubt but that this is the law, and there is no doubt but that this is just and right. Your partner, Mr. Addington, owns a farm also worth \$4,000; he owes Mr. Montgomery \$2,000, secured by mortgage upon the farm. Now, suppose the law stood precisely as I have above stated in regard to the transaction between Mr. Montgomery and yourself; but as to Mr. Addington, the law should say that the whole value of his farm should be assessed to him, and that he should pay the whole tax without any deduction from the debt of Mr. Montgomery; would anybody pretend that yourself and Addington received the equal protection of the law? Would it not be plain to every person that Mr. Addington was required to pay the Government, for the same protection which you secure a tax upon the same valuation, double that which was required from you? But this is not all. Suppose the law should provide, as it does, that your property should be assessed by a local assessor, and that if, after notice, you believed the valuation was too high, you might appeal to a local tribunal, before which you could appear, make your complaint, and be heard; and that, on the other hand, the same law provided that Mr. Addington should be assessed without

notice by a State Board of Equalization, which could assemble at any place in the State, and before which he had no legal right to be heard, and whose action was final; would anybody pretend that this law was just, or that you and Mr. Addington stood equal before the law? I think not; yet the two supposed cases present the position of the railroad company, with this exception, that there is much more merit in the claim of the railroad company than the holders of its bonds should be taxed than there would be in your case that Mr. Montgomery should be taxed for the amount of the debt which you owe to him.

You will remember that the Central Pacific Railroad was built in time of war, when values were largely inflated. For instance, locomotives for which it then paid \$35,000 can now be bought for \$8,000; steel rails can now be purchased and laid for less money per ton than the Central Pacific Company paid for freight alone on the iron rails which it used. To state the matter generally, the Central Pacific Railroad could now be constructed from San Francisco to Ogden for, say about one half what it actually cost to construct it at the time it was built. This shrinkage in value the railroad company has to bear, but it ought, in justice, to bear no more. Now, on the other hand, its bonds were sold, including the bonds guaranteed by the United States, on an average of not less than 40 per cent below their face value. These bonds in the hands of the bondholders have not depreciated, but, on the contrary, the Federal bonds are worth about 34 per cent premium, while the company's bonds are worth at least 14 per cent premium. While the property of the company is the general shrinkage which followed the war, and the resumption of specie payments has shrunk in value about 50 per cent, the property of the bondholder has in the one case increased 94 per cent and in the other 84.

In view of these facts, I assert without fear of successful contradiction that the discrimination made against the company by the system of taxation provided for in the new Constitution is unjust, and is more marked and unfair than the discrimination which would have been made had the law as to Mr. Addington and yourself been as above stated.

Are you prepared at this day to say that there should be one law for what you are pleased to call powerful corporations, and another law for that class which you term the poor? I do not believe that you are prepared to take this position, yet every argument which you advance tends in that direction.

I have maintained in these tax cases that there should be one law in the land, and that law should be administered equally with respect to every person within the jurisdiction. I have never proposed to compromise any tax. I have denied from the very beginning the validity of the provisions of the State Constitution, and have asserted that they are in flagrant violation not only of the Federal Constitution, but also of those great governmental principles which require that the laws should bear equally upon every person within the jurisdiction of the Government.

During the canvass which resulted in the adoption of the new Constitution, most of the eminent lawyers opposed its ratification by the people, took the same view of the question which the railroad company has since maintained.

The railroad company has at all times been willing to contribute its share towards the support of the State and County Governments, and from the very beginning of the litigation to this moment has not, as you put it, endeavored to make its own assessment, but has offered voluntarily to pay to the State and counties a sum greater than was ever levied as a tax upon similar property in any State in the Union, either in peace or in war.

The idle talk which has been current (I acquit you, however, of it), about the railroad company resisting the law, seeking to assess itself, and setting itself above the law, has no better foundation to rest upon than the fact that the railroad company, as any citizen might do, has gone into the Courts of the country under the shield of the Federal Constitution and questioned the validity of the Constitution of California in relation to revenue.

If the decision of the tribunal to which the Constitution of the United States has intrusted these questions shall be adverse to the position taken by the railroad company, it will cheerfully acquiesce in that judgment. That the decision will be in favor of the position taken by the railroad company, I have always believed. I do not think that the august tribunal can ever divide upon the question, whether the railroad company has received the equal protection of the law.

One of the learned Judges who decided the Santa Clara case, says, in his opinion, that "this case, as well as the San Mateo case, has been laboriously prepared and elaborately argued by eminent counsel, and if the industry of the Attorney-General, and a large number of attorneys and special counsel for the numerous counties interested in the question, has failed to find any recognition of the principle which they are endeavoring to maintain, either in the practice of the several States in the text-books, or decisions, or even dicta of the Courts, we think it will be safe to presume that none can be found."

There is no precedent in the jurisprudence of civilized countries for the discrimination attempted to be made against the railroad company; nor is there, to my knowledge, any precedent for the action of the railroad company under the circumstances. Notwithstanding the fact that it was advised by most eminent counsel that these taxes were invalid and never could be collected; notwithstanding the decision of the Circuit Court of the United States; it has already paid over a million of dollars in the State and counties, and has offered to pay another million. It would be well for those who are criticising the action of the railroad company to look around and see what other corporation or person has ever paid voluntarily such sums of money upon a claim clearly illegal and unfounded.

I believe that if the fourteenth amendment to the Federal Constitution is rightly inter-

preted and faithfully executed, the result will be that no legislative assembly in America can give to one person any right, privilege, or thing without extending to every person within its jurisdiction the right to have the same privilege or thing, under the same circumstances. That no legislative assembly in America will ever be able to take from one citizen any right, privilege, or thing which it does not, under the same circumstances, take from all.

When this shall be accepted as the correct interpretation of that great amendment and conscientiously acted upon, we shall have intelligent legislation, directed in the best interests of the Government; the rich and the poor, the high and low, will stand upon the same footing before the laws of the country, and it will be no longer possible to array class against class.

In conclusion, and as pertinent to this article, I quote from the concurring decision of Judge Sawyer in the railroad tax cases the following:

"Great stress was laid in the arguments of plaintiffs' counsel upon the growing and over-weening power and greed of corporations; and it was vehemently asserted that this is a struggle between the people and the corporations for supremacy; that corporations, by corrupt means, and through their large and widespread influence, have obtained and they are obtaining control of Legislatures, etc.

If this be so, it is of the utmost importance to every natural person in the United States, that these guarantees of the fourteenth amendment to the National Constitution be maintained in all their length and breadth. They are the only means of protection left to the people. If these unequal taxes can be imposed upon the class of corporations named in the Constitution, the position of the parties can be reversed, and the unequal law now thrown upon the corporations may hereafter be imposed upon the other parties. If these can be taxed without a hearing, and if there is good ground for the alarm manifested by the counsel of the plaintiff, such corporations when they acquire the deprecated power and control indicated, will not be likely to be slow in shifting the unequal burden to the other side. There is, therefore, upon that hypothesis, no safety to the people except in most rigidly maintaining the guaranties of the fourteenth amendment in their broadest scope.

Very respectfully yours,

CREED HAYMOND.

MR. HAYMOND: Then I offer in evidence an article headed "Railroad Taxes," from the "Bulletin," and signed "Lex." The paper is not paged, but it is an attorney's review of all the methods of assessments, costs, etc. It reads as follows:

["Bulletin," January 26, 1884.]

RAILROAD TAXES.—AN ATTORNEY'S REVIEW OF THE METHODS OF ASSESSMENT ENFORCED, AND THE APPEAL THEREFROM TO THE COURTS. THE STATE CONTROLLER'S ACTION.

Editor "Bulletin:"

After three years litigation an agreement has been made between the State authorities and the railroad companies to adjust the taxes heretofore in dispute.

Prior to the adoption of the new Constitution the railroad companies had for many years, without any contest, promptly paid all taxes assessed against them. After the new Constitution was adopted, which by its terms imposed the duty of assessing railroads operated in more than one county upon the State Board of Equalization, the railroad companies affected contested the validity and justness of the taxes, chiefly upon two grounds. First, that the provisions of the Constitution of the State of California which allowed all other persons and corporations to deduct mortgages from the value of their property, and provided that the value of such mortgages should be assessed to the holders thereof, but denied that deduction to the companies interested, violated not only the principles which are the foundation of all just taxation, namely, equality in the apportionment, but also the fourteenth amendment to the Constitution of the United States, which requires such equality.

Second, that such provisions gave to every other person and corporation the right to a hearing before their liability was fixed, and the right of appeal, and denied both of these rights to the companies assessed by the State Board of Equalization, thereby violating the provisions of the Federal Constitution which declare that no person shall be deprived of property without due process of law; and that no State shall deny to any person within its jurisdiction the equal protection of the law.

All the suits to enforce the collection of these taxes were transferred to the United States Circuit Court, and the San Mateo case came up for hearing before Justice Field and Judge Sawyer, upon stipulation as to the facts, made by Attorney-General Hart, and Mr. Rhodes, counsel for the plaintiff, and by the attorneys for the railroad companies. After an elaborate argument judgment was rendered in favor of the railroad company. From this judgment a writ of error was taken to the Supreme Court of the United States.

The election came on, involving a change in the personnel of the State administration, and it was asserted in every quarter that the San Mateo case did not fully present the

State's side of the question. That case was argued in the Supreme Court of the United States and submitted for decision. Other cases were pressed in the Circuit Court of California, and in view of the assertions that had been made about the San Mateo case, the railroad company reluctantly consented that the submission of the San Mateo case might be set aside and cases enough tried in the Circuit Court (by new counsel coming in under the present administration) to present all the facts, and that upon these cases being taken to the United States Supreme Court they should be advanced. In pursuance of this agreement several cases were tried and decisions were given therein in favor of the railroad companies.

The attorney for the State produced a writ of error in a single case, to wit, the Santa Clara case, and moved to advance this case on the calendar; but the Supreme Court refused to hear the litigation piecemeal, and required all the cases that had been tried to be brought up, hence the delay.

In 1882 the railroad companies brought in the Superior Court of San Francisco, before Judge Waymire—now one of the counsel for the State—a series of injunction suits, and tendered in Court and offered to pay without prejudice 66 per cent of all the taxes assessed. This offer was refused.

The taxes for the year 1880-81 were assessed by the State Board of Equalization before any other assessments were made, and before the State Board could know at what ratio other property would be assessed. In 1882, and after the Supreme Court of California had decided that the State Board of Equalization had no right to raise individual assessments, the State Board again assessed the railroad property at about 66 per cent of the previous assessment, the Chairman of the Board stating in open Board that the assessments for the preceding years had been made high upon the theory that the Board had the right to raise all other assessments in the State to the same standard. This portion of the proceedings of the Board was published in the press of that date, and was a concession by the highest authority in the State that the assessments for the preceding years were enormous.

I have already shown in a previous communication to your paper that the assessment for the year 1882 was a higher assessment than was ever made upon railroad property in any State in the Union; although in some States there were double track railroads, and in others four track roads of far greater value than any roads in this State.

Another fact which has been lost sight of in the consideration of this matter, is that all of the railroad is not assessed by the State Board of Equalization; that the warehouses, stations, depots, water stations, workshops, and steam ferryboats, all of which are as much a part of the road as the rails, and which in other States were included in the assessment, were all separately assessed by the County Assessors, and the taxes for these had all been paid for the years in question.

The lands belonging to the railroad company were also separately assessed, and the taxes paid without delay.

After the assessment of 1882, and the concession made by the State Board of Equalization, settlements were made with a majority of the counties interested, which settlements reduced the principal for the three years to about \$800,000.

Notwithstanding the fact that the railroad companies have prevailed in the litigation, and notwithstanding the fact that the attorneys who had taken these cases on contingent fees for the State had, after hearing them argued, demanded cash fees in addition, thus showing their lack of faith in the final result, the railroad companies now offer to settle the unpaid taxes for the years 1880, 1881, and 1882, as levied.

This proposition the State authorities have, we understand, accepted, the Attorney-General holding that it is very doubtful whether the State, in any event, could recover more.

As to the taxes for the year 1883, the Legislature of last winter provided for a State assessment roll, upon which taxes assessed by the State Board of Equalization should be placed.

The railroad companies have already tendered a large proportion of these taxes, under an agreement that if the portion tendered were accepted, it should not prejudice the right of the State and the counties to recover the balance. The Controller has refused to permit these part payments to be made.

When the railroad companies have paid the \$600,000 in question, they will have paid for the three years more than \$2,000,000 State and county taxes, nearly three fourths of which, under the decision of the Courts, they are not legally liable for. When irresponsible fault-finders can point to another corporation which has, to like extent, acknowledged equitable claims, it will be time to criticise the action of these companies.

L. E. X.

MR. HAYMOND: Then I will offer in evidence Exhibit "A," a letter addressed by Governor Stoneman to Judge Rhodes and Mr. Delmas, dated February 6, 1884. It reads as follows:

EXHIBIT "A."

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT, }
 SACRAMENTO, February 6, 1884. }

Judge A. L. RHODES and D. M. DELMAS, *Esq.*:

GENTLEMEN: Knowing you to be counsel for the State and certain counties in various actions now pending against the Central and Southern Pacific Railroad Companies to recover delinquent State and county taxes now due from said corporations, I take the liberty of asking your opinion, in writing, to the following questions in connection with said cases, viz.:

1. Can the State and counties, parties plaintiff, in your opinion, recover from defendants the five per cent delinquency, as provided in Sections 3746 and 3756 of the Political Code, and other sections and Acts relating to said delinquency?

2. Can the State, in your opinion, recover from the defendant the 2 per cent per month interest, as provided in Section 3803 of the Political Code?

3. Can the State, in your opinion, recover from the defendants the fees of the attorneys acting for and on behalf of the State to the extent of 10 per cent of the amount found due, or for any amount of fees less than 10 per cent?

4. Has the Attorney-General, or either or all of the attorneys acting for and on behalf of the State and said counties in those cases, the right to stipulate that judgment may be taken in favor of the plaintiff for the amount of the tax assessed by the State Board of Equalization without the penalty, interest, or attorneys' fees, or consent to or allow judgment to be taken, by order of the Court or otherwise, for a less amount than the amount claimed by the plaintiff in the complaints on file?

An early answer is desired.

Yours truly, etc.,

GEORGE STONEMAN,
 Governor.

MR. HAYMOND: Then I will offer in evidence Exhibit "B," attached to Exhibit "A," which reads as follows:

EXHIBIT "B."

SAN FRANCISCO, February 7, 1884.

To his Excellency GEORGE STONEMAN, Governor of California:

DEAR SIR: In answer to your communication of the sixth instant, which is hereto appended, we beg leave to make the following replies, responding to the questions in the order in which they are stated:

1. To the first question we answer, yes.

2. To the second question we answer, yes.

3. To the third question we answer, yes; to the extent of 10 per cent.

4. To the fourth question we answer, no. Neither the Attorney-General, nor any of the attorneys acting for and on behalf of the State, has any such power, authority, or right, as mentioned in this question.

The time allowed for a reply does not permit the giving of the reasons upon which our conclusions are based, but if these are desired, we shall be glad to furnish them.

Very respectfully,

A. L. RHODES.
 D. M. DELMAS.

MR. HAYMOND: I next offer in evidence a letter from myself to General Stoneman, in relation to those matters, headed, "An Open Letter from Haymond to Stoneman;" the letter which I referred to as having been prepared by Colonel Hoge and myself. It reads as follows:

THE EXTRA SESSION—AN OPEN LETTER FROM CREED HAYMOND TO GOVERNOR STONEMAN.—THE TAX ISSUE KILLED.

[Sacramento "Bee," March 4th.]

Hon. Creed Haymond, attorney for the Central Pacific Railroad, has addressed the following open letter to Governor Stoneman:

Governor GEORGE STONEMAN:

DEAR SIR: That in the future there may be no misunderstanding in reference to the position of the railroad companies I take the liberty of addressing this communication to you in your official capacity.

Prior to the adoption of the new Constitution the property of railroad companies was taxed in the same manner as the property of other persons.

IN VIOLATION OF THE CONSTITUTION.

The new Constitution separated part of the property of railroad companies from the great mass of property in the State, and applied to it a system which the companies believed to be a violation of the National Constitution. To determine this question, Mr. C. P. Huntington, early in 1881 commenced actions in the Circuit Court, in which the whole matter at issue between the companies and the State could be finally determined. The State took a technical objection to the jurisdiction of the Court, and the case went off upon that ground, and without reference to the merits.

In 1882 the companies commenced proceedings in the Superior Court of San Francisco, on the equity side, to determine the question at issue, and tendered into Court without prejudice 65 per cent of the amount claimed, and desired to litigate for the balance. Again the State interposed technical objections, refused to receive part payment, or to let the case be heard on the merits.

THE STATE COMMENCES SUIT.

The State then commenced suits to recover the taxes. These cases were taken into the Federal Courts, and an agreed case, known as "the San Mateo case," was made up between the State, represented by Judge Rhodes, and the companies, represented by Judge Sanderson and myself. This case was taken to the Supreme Court, advanced on the calendar, argued, and submitted for decision. In the meantime an election had occurred—a change in the State administration. It was asserted by the press and many able lawyers, publicly, that the case was not a fair one. These things were pressed upon the Supreme Court of the United States, and that tribunal, as I am advised, directed that enough cases should be tried upon their merits to present all the questions, and that when such cases were brought up that they would advance them on the calendar and hear them at once. This was announced at the commencement of the Circuit Court last August. These cases were tried, six in number; but one of them has yet been appealed.

That case was taken up, and a motion made to advance it. The Court refused. The ground of refusal, as stated in the telegram from Washington to the press, was that all must be brought there, and they would not hear the case by piecemeal.

A PROPOSITION FOR SETTLEMENT.

Upon my return to the State in October last, I made you in writing a proposition to settle the whole matter upon the basis of the assessment of 1882. This you refused, giving in writing your reasons for such refusal. Your refusal was in November. On the twelfth or thirteenth day of November, the "San Francisco Chronicle," in an article commenting upon the railroad's proposition, took the ground that you had done right, but maintained that a fair settlement of the whole matter would be for the companies to pay the taxes flat. To this the companies acceded, being willing to make any sacrifices for peace. Matters continued in this state until a few weeks ago, when I was advised that the Attorney-General would close the cases in which counsel employed by counties interested did not object, upon the "Chronicle's" proposition.

Correspondence between the Attorney-General and yourself excited the public mind, and we concluded it best to pay the taxes, according to the "Chronicle's" proposition, and leave the question open whether we were liable for any more.

THE FULL AMOUNT DEPOSITED.

I met the Attorney-General in the Circuit Court, and all the cases then on the calendar were submitted for decision on the testimony taken in the six cases tried. Judge Sawyer then decided the case for the defendant. I then, in open Court, suggested that, notwithstanding this decision, judgments might go for plaintiffs for the amount of taxes claimed. Judge Sawyer declined to do this without the consent of the Attorney-General, who did not consent. At 3 p. m., of the same day, I went into Court and moved to set aside the judgments and enter judgments for the plaintiffs, as proposed. Messrs. Rhodes and Delmas were present, and one or the other objected, and asked for a continuance of the matter until the next morning, agreeing, as I understood them, that the *statu quo* should be maintained.

I then deposited the full amount of the taxes with the Clerk of the Court, to be paid to the State and counties interested.

As the matter then stood, judgments were for the defendants, on the same evidence already taken. The money was in the hands of the Clerk to pay the taxes.

The next morning the papers published your letter to Mr. Delmas, announcing that in your opinion the Legislature should be convened, and that you would convene it.

A STIPULATION DRAWN.

After this, all parties were again in Court, and I urged the Court to enter judgment for plaintiffs, which the Court would not do unless the Attorney-General consented to set aside the judgment already entered. This the Attorney-General did, and judgments were ordered accordingly, I stating in open Court what was strictly true, that I desired to get the money into the State and County Treasuries as soon as possible, and that the stipulation made by the Attorney-General and myself was not intended, and under the circumstances should not be construed, to cut off any rights which the State would have to appeal.

I further drew the following stipulation, which embodied my understanding of the situation:

"In the Circuit Court of the United States, Ninth Circuit, District of California.
 "[Title of Court and Cause.]

"It is hereby stipulated by and between the parties to the above entitled action that a writ of error shall be taken in the said case to the Supreme Court of the United States upon a record which shall fully present the question whether the defendant is liable for penalties, interest, and attorneys' fees claimed in said action.

"And it is further stipulated that both parties will join in the request to the Supreme Court either to advance said case at once for hearing and decision, or, if that cannot be done, both parties will stipulate to submit the case upon written or printed arguments, as soon as it can possibly be done.

"_____
 "Attorney for Plaintiffs.

"_____
 "Attorney for Defendants.

"SAN FRANCISCO, CAL."

WAITING TO HEAR FROM THE SUPREME COURT.

I then telegraphed as fully as possible the situation to the Supreme Court at Washington, and asked them to hear a test case at once, and am at this moment expecting to receive an answer.

While I am of opinion that the entire rights of the State involved in this controversy are saved (as it was intended they should be) by the judgment already entered and proposed to be entertained in favor of the State, yet I am perfectly willing to place the point beyond controversy by any agreement or any form of judgment that may be necessary for this purpose, so that no doubt can be entertained by any one, and so that every question involved between the railroad companies and the State may be set at rest forever, and decided finally and at once by the Supreme Court of the United States, no question remaining.

I have thus, my dear Governor, endeavored to give you a plain statement of the precise status of the litigation now pending, and of the entire willingness and readiness of the railroad companies now, as in the past, to bring the controversy between them and the State to an immediate and final conclusion.

I have the honor to be your obedient servant,

CREED HAYMOND,
 Assistant General Solicitor Central Pacific Railroad Company.

SACRAMENTO, March 4, 1884.

MR. HAYMOND: From the second scrap-book I offer in evidence my letter of November 22, 1885, making certain propositions to the State in relation to setting aside all of these judgments, which are also embodied in my letter to the Judiciary Committee of the Senate of this year. It reads as follows:

A SCATHING LETTER.—THE LATEST OFFER BY THE RAILROAD COMPANIES TO END THE TAX QUESTION.

The following letter is clearly explanatory, and needs only to be read to convey to the reader a true idea of the spirit that animates the railroad companies in all this tax dispute.

Mr. JOHN P. DUNN:

SAN FRANCISCO, November 22, 1885.

DEAR SIR: I have before me your "open letter" of November twenty-first. To my letter addressed to Messrs. Rhodes and Delmas, a copy of which you make part of yours, Judge Rhodes had already replied, recognizing in a suitable manner the courtesy which I had extended, and promising at an early day to make a public statement. I do not admit the right of Mr. Delmas to transfer the matter to any one. The misrepresentations contained in his letter to you will be noticed in a proper manner. You propose, in order that you may be satisfied of the good faith of my clients, to enter into certain stipulations with me relative to the pending tax cases. You have recently published a letter to the world in which you gravely assert that stipulations made by me have no binding force whatever, because I am not attorney of record. The Supreme Court of California and the Circuit Court have decided that you have nothing whatever to do with these cases. When you shall change your opinions as to my powers, and when the Courts shall have changed theirs as to your powers, I will consider your propositions. That you may be entirely satisfied with the good faith of my clients, and not hereafter have to give them "the benefit of the doubt," I will stipulate for my clients in a form which the Courts will hold binding if you will procure a like binding stipulation on the part of the State, as follows:

First—To set aside all judgments and orders heretofore made by any Court in all or any of the tax cases, and to withdraw all answers and defenses therein.

Second—To take an account of all assessments made against my clients for the past five years and all payments made thereon.

Third—To let the Court determine upon principles of right and justice—all legal technicalities being waived on either side, and with or without appeal as you may prefer—whether the railroad assessments were made upon a basis of equality and uniformity with the average assessment of other property in the State for the corresponding years, and whether or not the sums paid exceed or fall below what would have been justly charged had the assessments been so made.

Fourth—If it is decided by the Court that the sum paid is less than the amount equitably due, that judgment shall be rendered against the railroad companies for the balance; but if the Courts decide that the payments have been greater than the amount equitably due, then the faith of the State is pledged to return the railroad companies the excess.

Fifth—One case presenting fairly the legal questions raised in the cases to be reserved and presented to the Supreme Court of the United States for decision, in order that the State and companies may hereafter understand their respective legal rights.

The State cannot afford to take from any of its citizens more than is due. In my judgment, the railroad companies have already paid nearly double what was equitably due.

As to the difference between us relative to the amounts paid, I am having a statement made up from the vouchers, and will publish it. From this statement you will get the data by which your books can be corrected, and the full amount paid can be shown by them.

Relative to the submission of the San Bernardino case—under the ninety-day rule—I have only this to say: That the attorney for the State pressed for such submission, and I agreed to submit, but not until after the Kentucky cases had been decided. You say the Judiciary Committee at the "extra session," reported that the San Bernardino case could not be heard by the Supreme Court. The Supreme Court has since decided that it could be heard on the merits. I would respectfully suggest that the "extra session" is no longer authority, the people having at the last election reversed the "extra session."

Respectfully, your friend,

CREED HAYMOND.

MR. HAYMOND: Then I offer in evidence here an article, the author of which I do not know, but it is signed "Lex," December 8, 1885. It is a comparison of the California and Kentucky cases; a celebrated Kentucky case which it was then supposed had some bearing upon these tax cases. It is a discussion of them. I do this simply because the committee may desire to look into that case.

MR. DIBBLE: I think that is in 115 U. S. Reports.

MR. HAYMOND: It reads as follows:

THE RAILROAD TAXES.—THE WHOLE QUESTION REVIEWED.—A COMPARISON OF THE KENTUCKY AND CALIFORNIA CASES, AND ANALYSIS OF THE PRINCIPLES INVOLVED.—DOES THE RECENT DECISION AFFECT THE CALIFORNIA CASES?

Editor Evening Post:

No question has received so much attention among the legal fraternity as the railroad tax issues, while politicians and many others have come to regard it with interest, not only on account of the influence it has on the financial condition of the State government, but from principles involved. The railroads claim they are contending for principle and equality of taxation, while a certain class of politicians have found it convenient and profitable to harangue the uninformed on the arrogance and the injustice of the course pursued by these powerful aggregations of wealth and influence. The recent decisions made by the United States Supreme Court in what are commonly known as the "Kentucky cases," have given rise to a diversity of opinion, and produced an anomalous condition of affairs, inasmuch as each side claims a victory. One would suppose that under such a condition of affairs each side would be correspondingly happy, and all further discussion cease, but such is the inconsistency of human nature that the matter is still agitated and still "shrouded in the mysterious arguments of the lawyers," as a morning contemporary puts it. Among the numerous columns of newspaper articles devoted to this subject I have seen no comparison of the California and Kentucky cases, and no fair analysis of the principles involved, while a brief comparison and almost superficial examination of the two would suffice to convince any intelligent observer whether the decision of the Kentucky cases militates against the cause of the railroads in this State, or vice versa.

In a recent issue, a morning paper says: "On the two main points—the point that the railways had no notice of the assessments, and were, therefore, in danger of having their property taken without due process of law, and the point that a difference in the method employed for assessing railway property and the method employed for assessing other property was in violation of the fourteenth amendment—the Supreme Court reverses the decision of Judges Field and Sawyer sitting in circuit. That Judge Field concurred in reversing his own decision is not natural; he may have had reasons of his own. He may have seen the error of his previous way."

That Judge Field concurred in the decision is true, and he did so without giving a written opinion, but that he intended thereby to reverse himself is absurd, and could emanate from no source except one of well known hostility to the eminent jurist. No one acquainted with Judges Field and Sawyer doubts for a moment that either would have any hesitancy in reversing his own decision if convinced of his error, but the eminent standing of each, coupled with the gravity of the act, would seem to require that the reasons therefore should be published to the world, as all decisions of importance are. Judge Field concurred in the Kentucky cases, and an analysis of Justice Matthews' opinion would be found to affirm the doctrines enunciated by Judge Field in the California cases, and dispel the fallacy contained in the above excerpt.

As to the point that the railroads had no notice of the assessment. It is true this point was raised in the Kentucky cases, and decided, but it was *not* decided that no notice was necessary, and the entire opinion on this point is in complete harmony with the views of Judges Field and Sawyer. In the Kentucky case it was contended that the taxation of the roads by the State was an attempt to take the property without "due process of law" for the reason that they had no notice of the proceeding, or right to be heard, when assessed by the State Board of Railroad Commissioners.

On this question Justice Matthews says:

"It has been repeatedly decided by this Court that a proceeding to raise public revenue by levying and collecting tax is not necessarily judicial, and that 'due process of law,' as applied to that subject, does not require the right to such notice and hearing as are considered to be essential to the validity of the proceedings, and the judgments of judicial tribunals. Notice by statute is generally the only notice given, and that has been held sufficient."

STATUTORY NOTICE.

Further on the opinion says:

"This Board has its time of sittings fixed by law, and in the proceedings questioned in these cases, there was, in fact and in law, a notice and a hearing."

The Court decided by the above language that notice by statute was sufficient notice for the purposes of assessment and taxation, and in support of the position quoted as follows (96 U. S., 97, 107), the same authority relied upon by Justice Field in the California cases:

"In judging what is due process of law, respect must be had to the cause and object of taxing power of eminent domain, or the power of assessment for local improvements, or none of these, and if found to be suitable, or admissible in the special case, it will be adjudged to be due process of law; but if found to be arbitrary, oppressive, and unjust, it may be declared not due process of law."

"The Kentucky cases then decided (or rather affirmed, as there were no new points presented by the record, and the appeals were rather frivolous than otherwise) that personal notice was not necessary; that notice by statute was sufficient; that the proceeding was not judicial, and that the power of taxation came within the provisions of the fourteenth amendment."

Let us next examine the opinion of Justice Field on this point, and we find that he in no way differs from Justice Matthews. In deciding the Santa Clara case, he says (9th Sawyer, page 203):

"The notice to which we refer need not be a personal citation; it is sufficient if it be given by a law designating the time and place where parties may contest the justice of the valuation. As a general rule only a statutory notice is given. The State may designate the kind of notice and the manner in which it shall be given. All that we assert, or have asserted, is that there must be a notice of some kind."

Justice Sawyer's opinion is to the same effect. He says (9 Sawyer, 225-8):

"In my judgment the authorities establish beyond all controversy, that somewhere in the process of assessing a tax under a law, or a State Constitution, at some point before the assessment becomes irrevocably fixed, the person affected should have notice. The notice may not be required to be personal to each individual, or anything other than statutory."

OPPORTUNITY TO BE HEARD.

And again, "At the time the assessment in question was made, neither the Constitution nor any statute of California gave the defendant any right, or afforded it any legal notice of the proceedings, or opportunity to be heard."

In view of the above excerpts, it is difficult to perceive how there can be any difference of opinion as to whether the two sets of cases are in harmony or variance on the question of notice. It is true that the attorneys for the State and counties in the California cases claimed that a statute existed providing for notice—the Act of March 14, 1881—but in the trial of the cases it was proven by the original written journals in the custody of the

Secretary of State that the bill did not receive the constitutional majority on its final passage in the Assembly, and notwithstanding it was printed among the statutes of the State, and purported to be a valid law, it was declared unconstitutional and void. This being principally a question of fact, it is extremely improbable that the ruling of Judges Field and Sawyer in this record will be disturbed. It is also true that the Legislature of 1883 passed an Act providing for notice, but this could not affect the assessments for the preceding three years, and on this point alone it is difficult to perceive how the Supreme Court can do other than affirm its own rulings, and thereby affirm the judgment of Judges Field and Sawyer in the Santa Clara case. Had the time of the meeting of the State Board of Equalization been fixed for some certain and fixed period, it might be construed as sufficient notice; but as the meeting was fixed by law for "on or before the first Monday in May," the officers of the corporation might be kept watching for weeks for an opportunity to be heard, and the term is too vague and indefinite to be construed as a notice of meeting, which authority has determined is an absolute right. On the next point: that a difference in the method employed for assessing railroad property and the method employed for assessing other property is not in violation of the fourteenth amendment, and that Justice Field overruled himself; in this respect, also, the writer is equally at fault. Justice Field never invoked any such fallacy, and reference to his decision will readily convince us of the fact. The issue was raised in the Kentucky cases that the railroads of that State were denied the equal protection of the laws guaranteed by the fourteenth amendment, by a discrimination against them in ascertaining their value for the purposes of taxation. There was no claim that the property was not assessed at its cash value, the same as other property, but that they were assessed by a Board of Commissioners; that their property was assessed as real estate, and taxed as such, while other corporations paid a kind of income tax. Other real estate was assessed by local Assessors. Justice Matthews says there is nothing to forbid the classification of property for purposes of taxation, and the valuation of different classes by different methods. He further adds:

WHAT EQUALITY MEANS.

"The rule of equality in respect to the subject only requires the same means and methods to be applied impartially to all constituents of each class, so that the law shall operate equally and uniformly upon the person in similar circumstances. There is no objection, therefore, to the discrimination made as between railroad companies and other corporations in the methods and instrumentalities by which the value of their property is ascertained. The right to classify railroad property as a separate class for purposes of taxation grows out of the inherent nature of the property, and necessarily involves the right on its part (the Legislature) to devise and carry into effect a distinct scheme with different tribunals in the proceeding to value it."

An examination of the opinions enunciated by Judges Field and Sawyer in the San Mateo and Santa Clara cases will find them in entire harmony not only with the principle, but almost the language of the Court in the Kentucky cases. On this point Judge Sawyer says (8th Sawyer, 309):

"We do not conceive that a provision for assessing railroads operated in more than one county by the State Board of Equalization, while other local property is assessed by the local Assessors, would be denying the equal protection of the laws, provided the assessment in the former case is made upon the same basis and upon the same principles, etc., as in the latter. Nor do we think that the assessment of the railroad as a unit is objectionable. Indeed, this seems to be the only practicable way of assessing such a road."

Indeed, the right of classification was not seriously questioned in the California cases. Justice Field simply held that the classification must be based on equitable principles. He says (9th Sawyer, 199):

"But it is urged that property may be divided into classes and subjected to different rates; that such classifications may be made from inherent differences in the nature of different parcels of property, and also from the different uses to which the same property may be applied. As already mentioned, the Constitution of the State provides, with respect to property, that it shall be taxed in proportion to its value. The classification of property, either from its distinctive character or its peculiar use, must be made with the rule prescribing taxation according to value."

An examination of the opinion in the Kentucky cases will disclose the fact that no equitable question was involved. It was not claimed, as in this State, that the roads were compelled to bear an unjust proportion of the public burdens, by reason of the unequal taxation. It was not claimed that they were subjected to pay double taxation, but simply that the Legislature had discriminated against them by prescribing different forms, means, or methods for ascertaining the value of their property.

IS IT A SYSTEM OR A STANDARD?

The question remains to be settled whether the terms "means," "methods," and "instrumentalities," as applied to the medium of ascertaining the value of taxable property, as used by Justice Matthews and concurred in by the Courts, is intended to designate the Board, officer, or quasi-judicial authority, with the powers and jurisdiction thereof, or whether it is intended to mean the gauge or standard of measurement by which such authority may ascertain such values, or both, or whether the latter powers are necessarily included within the former. In other words, is it intended that such a rule as the follow-

ing should be valid? As to valuation for the purposes of taxation, all property shall be classified into two classes: First, railroad property, which shall be taxed at double its cash value; second, all other property, which shall be taxed at its actual cash value. This was the principal point on which the California cases were decided, and we shall examine the question more in detail further on in this article.

The element of classification, in the language of Justice Miller, requires the same means to be applied impartially to the constituents of each class, so that the law shall operate equally and uniformly upon the person in similar circumstances." This element is lacking in the classification of California railroads. It was in evidence in the Santa Clara case, that a private citizen owns a railroad extending from the City of Marysville, in Yuba County, to Oroville, in Butte County. This railroad is not assessed as the railroads of corporations. If this road were covered by a mortgage to its full value, the owner would have no taxes to pay upon it, while another road, from Marysville to Sacramento, covered by a like mortgage, but owned by a corporation, or aggregation of citizens, would pay taxes to its full value. It will thus be seen that the element of equality so essential to bring the California cases within the rule is lacking. In the language of Justice Field (8th Sawyer, 20):

"It is not classifying property to make a distinction of that character in estimating its value as a basis for taxation. It is making the amount of taxation depend, not upon the nature of the property or its value, but upon its ownership; and, if this can be done, there is no protection against unequal and oppressive taxation."

THE LAW CANNOT BE UNJUST.

Appropos to this is the language of Justice Matthews in the Kentucky decision: "If the system of taxation be found to be arbitrary, oppressive, and unjust, it will be declared to be not due process of law."

To sum up, two principles were settled by the Kentucky decision, neither of which brought the case within the fourteenth amendment.

First—Statutory notice is sufficient for the purposes of assessment and taxation.

Second—The classification of property for the purposes of assessment and taxation is proper and permissible where the rule works equally on all the class and applies impartially to all the constituents under like circumstances, without working oppression and injustice.

It was decided in the California cases that the railroads did not have even statutory notice, and that the classification as made discriminated unjustly against a species of ownership. On both points the cases are almost diametrically opposed to the Kentucky suit. Had the latter case been fortified on either point with the same state of facts which exist in the California cases, the decision would have been exactly the reverse of what it was. The Court of Appeals in Kentucky, in deciding the cases (and the decision was affirmed by the Supreme Court), refer to the same class of cases, then recently tried in California, and the Judges were of the opinion that the facts were so dissimilar that the cases must necessarily differ, and divers conclusions be reached. It would be difficult to perceive how Justice Field could consistently do anything else than concur with the decision in the Kentucky cases; and it will be still stranger if the Supreme Court should inconsistently fail to affirm their own opinion and concur with Justice Field when they decide the celebrated California railroad cases now pending on appeal.

What were the grounds on which the railroad companies contested the payment of their taxes in this State? There were simply two points, and they are briefly stated by Justice Field in the opening of his opinion in the San Mateo case (8th Sawyer, 246):

"The railroad company contends that the taxes are invalid and void on two grounds:

First—Because the assessment was made in pursuance of the State Constitution, in enforcement of which the company was not allowed any reduction for the valuation of its property, and was thus subjected to an unjust proportion of the public burdens, and denied the equal protection of the laws guaranteed by the fourteenth amendment.

Second—Because the assessment, made in pursuance of the provisions of the State Constitution, which provided no notice to the company, and gave no opportunity to be heard."

A SOPHISTICAL ARGUMENT.

We have examined the second ground of contest and referred to the other incidentally, but the first named is the great question of overshadowing importance in this important litigation, which goes to the very foundation of constitutional government—the great question whether oppressive and unequal taxation is permissible under the fourteenth amendment to the Constitution of the United States. This matter cuts no figure in the cases taken from the highest Court of Kentucky, and dwarfs into insignificance all other questions. It is the question upon which the California railroad cases must stand or fall in the supreme tribunal of the nation. From the same article of the morning paper, to which we have referred in this creed, we take the following excerpt:

"The point is covered by that portion of the decision of the Supreme Court which distinctly affirms the right of a State to devise different schemes for the assessment of different classes of property. The rule which authorizes a State to provide that private property shall be assessed by Assessors, while railway property shall be assessed by a Board of Equalization, also authorizes a State to provide that railway mortgages shall be assessed in one way and private mortgages in another."

The sophistry of the argument is apparent to all but the dyed-in-the-wool anti-monopolist. None so blind as those who will not see. Railway mortgages are not assessed in one way and private mortgages in another. Railway mortgages are not assessed at all, and private mortgages are. Railway property is assessed by the owners at its full value, while other property is assessed at its value, after deducting the value of the mortgage. The writer assumes too much, and the conclusion that a State may devise any scheme or schemes for the assessment of different classes of property is not borne out by the decision—the scheme must not be “found to be arbitrary, oppressive, and unjust.” Such is the language of the Court in the Kentucky case on which the writer relies. A brief analysis of the proposition will readily convince one that it is not “assessing railway mortgages one way and private mortgages another.” The State Constitution declares that a mortgage, for the purpose of taxation, shall be treated as an interest in the property; that is, there are two owners to be taxed for every piece of mortgaged property—the mortgage shall be taxed for the amount of the mortgage and the mortgagor shall be taxed for the residue. This is all cases except the property of railroad corporations. In all such cases the mortgagee shall be exempt from taxation. The mortgagor shall be subject to double taxation, as contradistinguished from all other taxpayers. A discrimination is made against the companies because of their ownership; not from any differences in the character of the property, or its specific uses, but in favor of a special favored class of bondholders, from no other reason apparently than a capricious desire to “cinch” the railroads at the time the new Constitution was adopted. The principle which justifies double taxation of the owners of railroads, and exempts bondholders, would justify any like discrimination between owners on account of age, color, or race, which the State might designate as a sufficient reason for discrimination. The valuation and constant taxation could vary as the owner was white or black, old or young. The value of the mortgage could be deducted from the property of the white man and not the black one—from the young and not the old; deducted if the property was owned by a man doing business alone, and not deducted if owned by men doing business together as partners, associations, or corporations. Cannot any man, or set of men, be despoiled of their property by such a scheme? It is arbitrary and despotic—the very essence of tyranny—and only resorted to by evil governments in evil times. Of what avail are the rights guaranteed to every citizen in the enjoyment of his life and property by the fourteenth amendment, if some cunningly devised scheme of taxation could force any special class to bear an unequal share of the burdens of taxation? If such trickery could be successful, the fourteenth amendment should read, as ironically observed by counsel in the San Mateo case: “Nor shall any State deprive any person of his property without due process of law (except it be in the form of taxation), nor to deny any person within its jurisdiction the equal protection of the laws (except it be by taxation).”

AN APT ILLUSTRATION.

It is well known to all intelligent persons how the rule works, but an illustration may not be out of place. Suppose A, a natural person, has \$5,000 in cash, and purchases of B a piece of real estate for \$10,000, that being the actual value. He pays one half down and gives a mortgage for \$5,000 to secure the balance of the purchase money. The State Constitution says that A and B each has a \$5,000 interest in the property and each shall be assessed and pay a tax on \$5,000. A, in this instance, is worth only \$5,000, and if he pays taxes on a larger amount he pays taxes on somebody else's property. C, a railroad, purchases of B, for its proper use, an adjoining piece of real estate for \$10,000, paying \$5,000 down and giving a mortgage for the balance of the purchase money. In this case C has only a \$5,000 interest in the property—precisely as in the other case—and B the rest. Each has a half interest; but in the latter case C shall, nevertheless, be assessed for and pay taxes on the whole property—double the amount he really owns—and B shall be exempt from taxation on this piece of property. C pays taxes on his own and B's property, and money, to the amount of the tax, is taken from C and appropriated to the use and for the benefit of B, to liquidate B's share of the public burdens. It seems self-evident, under such circumstances, that a law authorizing and requiring such proceedings does not afford, but expressly denies, the equal protection of the laws granted by the great Magna Charta of the American people—the fourteenth amendment. Perhaps Mr. Dunn's legal advisers may be able to explain on what principle of justice or equality such a system can be upheld. If they are able to do so they have certainly mastered the situation since the time the cause was presented and argued before the Court, for on this subject Justice Field says (9th Sawyer, 178):

THE OWNER SHOULD PAY THE TAX.

“On what principle or by what species of reasoning a tax upon property can be upheld and enforced against a party, when the taxable interest in it had, at the time of the levy of the tax, been transferred to another, I am at a loss to understand. This position of the case was suggested to counsel on more than one occasion during the argument, but no answer was made to it. To every other position an answer was attempted, but to this one none, and as we think, for the best of reasons, because none was possible.”

We now revert to the proposition whether the modes, methods, and instrumentalities which may be adopted in ascertaining the different values of the different classes of property, justify a different gauge or standard of measurement for different classes of owners. Thus one class of owners shall have their property taxes at its cash value; another at a

fictitious value; white owners at 50 per cent of its real value; black owners at double its value, and associations of men or corporations shall be taxed for the interests of others in the property. Such a system is arbitrary and unjust. Judge Sawyer states the true principle of classification in the Santa Clara case (9th Sawyer, 234).

"Different kinds of property may require to be taxed in different forms and modes in order to be equally taxed. And classifications of property for purposes of taxation should have reference to the just equality of business, as far as that is practically attainable. Classification should have reference to the different character, situation, and circumstances of the property, making a different mode or form of taxation proper, if not absolutely necessary. It cannot be arbitrarily made with mere reference to the nationality, color, or character of the owners."

The language quoted might seem suitable enough to have been taken from the Kentucky decision, but it is from the California case which Mr. Dunn's disciples claim is in conflict with the former judgment. The great trouble with these partisans is that they are blinded by prejudice. They cannot see the distinction between the classification of property *as* property for the purpose of taxation, according to its character and uses, and the classification of the owners of property as owners. For instance, when the first mortgage bonds of the Southern Pacific Railroad Company are foreclosed the property will pass into the hands of private parties, and will be taxed on an entirely different system—the value of the second mortgage will be taxed to the holders thereof, and deducted from the value of the property, although there is no difference in the character and use of the property, but simply a difference in the ownership. It was decided (or affirmed) in the Kentucky cases that property might be classified according to its character and use, for the purposes of taxation, so long as the result of such classification was not "oppressive, arbitrary, and unjust," but it was not decided that property might be classified by ownership, and never will be so long as reason holds its sway. If such a consummation should be ever reached, the equal protection of the laws guaranteed to every citizen would dwindle into a hollow mockery and delusive sham. As justly observed by Senator Edmunds in his argument before the Supreme Court:

A CHANCE FOR COMMUNISTS.

"If you once concede the point that you may classify your values on different principles, as values, by deduction or otherwise, then there is no check upon the exercise of arbitrary power. The mob or commune that can get possession of the State Legislature for one term may despoil every one of its citizens whom it chooses to despoil, and the liberty and security of the Constitution, securing national intrinsic rights everywhere and to everybody—will turn out to be an utter delusion."

Some minor questions incidentally arose in the trial of the California cases. The attorneys for the State claimed that in the special case on trial (the Santa Clara case) the railroad companies should be adjudged liable to pay the taxes, notwithstanding the discrimination, because the mortgage in that case given by the company, contained a covenant that the corporation would pay all taxes and public burdens and charges levied upon the property. On this point Justice Field says:

"The covenant cannot affect one way or the other the right of the plaintiff to recover. The power of the State is not enlarged or diminished by it. It is not made with the State and could not be enforced by it. It is a matter which concerns only the parties. They can, by arrangement, vary it any day; they can enlarge it, release it, or qualify it, whenever they choose. It would be strange, indeed, if the State's power of taxation depended in any way upon the stipulation of third parties, or the validity of a tax could be affected by it. The covenant is necessarily limited to such taxes as may be lawfully levied on the mortgaged property, and cannot be construed to extend to any taxes in disregard of the Constitution and laws."

In other words, Justice Field held that the State's sovereign authority to levy and collect its taxes, did not depend on the private agreement of its citizens, and if a tax was unlawfully levied, a private contract could not give it validity. A position which is unanswerable.

Another point made by the State's attorneys in the California cases was that the word "person" as used in the fourteenth amendment, did not apply to artificial persons or corporations—that it simply meant natural persons. In other words, they claimed that when natural persons associated themselves together and conducted business in the form of companies or corporations, they lost those rights of equality and the protection of the laws which they would have otherwise enjoyed. They based their pretensions on the fact that the fourteenth amendment was adopted as a protection to the negro. Justice Field held that while such was undoubtedly the origin of the provision, the language was unequivocal, and it extended its protection to all persons, natural and artificial; of all colors, creeds, nationalities, and conditions. The Supreme Court evidently concurred on this point, for in the recent decision, they held by implication, that corporations were entitled to equal protection, and decided the case on merit, without regard to this technical objection.

In the face of these patent facts, it is difficult for any reasonable person to comprehend how the Supreme Court can do anything but affirm the unanswerable logic and convincing conclusions found in the opinions of Judges Field and Sawyer in the celebrated railroad cases. Of course, these remarks do not apply to your genuine hard-shelled, anti-monopolist. The flattering hope of yet "cinching" the railroad is his guiding star; it is the beacon light of his political career, and he watches it with pride, as the delusion which keeps

his fragile bark from dashing to pieces on the solid rocks of truth and justice. If the railroads should submit to the extortion of discrimination that he and his like are enabled to practice upon them, through the ignorance and prejudice of his deluded constituency, then his occupation would be gone. While his battle cry is the railroad tax question, he secretly prays that the railroads will never pay their taxes. On the rostrum and through the press he exhorts his followers that the railroads should pay their taxes, "the same as other folks," and that all "voluntary contributions" offered in the shape of taxes should be indignantly refused as beneath the sovereign dignity of an outraged people. The mask of hypocrisy can be retained but a short time longer by the demagogic element, for a speedy decision on this question by the Supreme Court is a consummation devoutly to be wished.

A WRETCHED SYSTEM OF TAXATION.

The whole system of laws in California for the collection of taxes is sadly out of joint. A statute, which allows 10 per cent additional for lawyer's fees, to be paid by a taxpayer who may have good grounds for contesting the payment of his taxes, is a species of extortion. It is this statute which has created all the devilment in the present cases. Visionary lawyer's fees, aggregating over \$100,000, have been piled upon the railroads—more than an ordinary fortune, if they were able to collect them. It is this enormous prospective consideration which has encouraged such an aggressive and persecuting spirit in the railroad tax cases, and enabled grasping and selfish leaders to carry the matter into political conventions, and, indeed, its baneful influence to permeate almost every department of the State Government. They have gained almost absolute and tyrannical control of one political party in the State, which, led on in its blind zeal and devotion by its vicious and dangerous leaders, is pledged for the extortion of this money from the railroad companies, even if it has to be taken in defiance of the judgments of the Courts and in defiance of law. A political party attempting to prejudge the decision of the Courts and pledging itself to extort the so called taxes, whether legally or not, is a disgrace to the civilization of the west. Had it not been for this 10 per cent statute, the tax question would have been settled years ago, and the Democratic party of California left without an issue.

What difference does it make to the revenue of the State if the railroads were assessed and taxed the same as other property? Not one farthing. The same amount of revenue would come from railroad taxation, but would come from different sources. Instead of the mortgagors paying the full amount, the mortgagees would bear their just proportion of the public burden, as is the case with all other mortgaged property. As the taxes on the mortgage would be a lien on the railroad property, the payment could be enforced as in all other like cases. It would be simply shifting a portion of the burden on the shoulders of other owners—if the mortgage covered the full value of the road, the owners of the mortgage must pay all the taxes—such is the law as it operates on others, and there is no good reason for making an exception of any person or class of persons.

When the news of the decision in the Kentucky cases reached us, Mr. Dunn authorized the announcement to the world, through the public press, that "The decision settles beyond any controversy that the same Court will decide in favor of the State." Mr. Delmas, his legal adviser and first lieutenant, also authorized the announcement that he regarded it as a "victory for the State" and a most complete defeat of the railroad companies. Perhaps Mr. Delmas also thinks that Justice Field overruled himself; although Justice Matthews quoted the same authorities and followed the same line of reasoning that Field did in the California cases. Time will tell. Hope told a flattering tale. In the meantime, Delmas and his followers can lay the flattering unction to their souls, that unless their cause is sustained, next year's Democratic victory, and 10 per cent counsel fees, will vanish into thin air like the baseless fabric of a vision.

LEX.

DECEMBER 8, 1885.

[The following is a receipt from Rhodes & Barstow, attorneys for San Mateo County, for \$7,247 63, together with \$724 76 attorney's fees, to be credited as a payment by defendant on account of taxes for the fiscal year 1881-82 in San Mateo County:]

In the Superior Court of the State of California, in and for the County of San Mateo.

In U. S. Circuit Court, Ninth Circuit.

COUNTY OF SAN MATEO, Plaintiff,	} No. 2807.
vs.	
SOUTHERN PACIFIC R. R. Co., Defendant.	}

Received, San Francisco, September 6, 1882, of the Southern Pacific Railroad Company, the sum of seven thousand two hundred and forty-seven and sixty-three one hundredths dollars (\$7,247 63), and the sum of seven hundred and twenty-four and seventy-six one hundredths dollars (\$724 76) attorney's fees, all to be credited upon any judgment that may be obtained by the plaintiff in the above entitled action.

In case judgment shall be rendered in said action in favor of said defendant, then said sum of money, less our fees agreed to be paid by said county, shall be paid into the treas-

ury of said County of San Mateo as a donation by said defendant in lieu of taxes for the fiscal year 1881-82 declared invalid. But in the event that a law shall be hereinafter passed providing for a reassessment of property referred to in said complaint in said county for said fiscal year, then said sum of money is to be credited as a payment by defendant on account of taxes for said fiscal year.

[Signed:]

RHODES & BARSTOW,
Attorneys for San Mateo County in said action.

[The following is an agreement between the Board of Supervisors of San Mateo County and the Southern Pacific Railroad Company, regarding an action pending in the Supreme Court of the United States, said agreement being dated December 11, 1885:]

WHEREAS, There is now pending in the Supreme Court of the United States an action in which the County of San Mateo is plaintiff in error and the Southern Pacific Railroad Company is defendant in error; and, whereas, the defendant in error, on the sixth day of September, 1882, paid to Rhodes & Barstow, attorneys for plaintiff in error, on account of the cause of action stated in the complaint, the sum of \$7,247 63, and the further sum of \$724 76, attorney's fees; and, whereas, the said action and the proceedings therein were of a friendly nature entered into in good faith to determine the validity of the constitutional provisions of the State of California, relating to the taxation of railroad property; and, whereas, when said case was argued and submitted to the Supreme Court of the United States, various parties, for reasons of their own, misrepresented the said action and the relation of the parties thereto; and, whereas, it is believed by the parties that the purposes for which said action was instituted have, by such misrepresentations, been defeated; and, whereas, it was always understood that whatever might be the result of said action, the said Southern Pacific Railroad Company should pay the amount claimed and thus show its good faith therein; and, whereas, the Supervisors of said county have determined that it is impolitic to make any further expenditures in said actions, and have authorized a committee of their Board to settle and finally adjust the same.

It is hereby agreed between the Southern Pacific Railroad Company, defendant in error in said action, and the said committee of the Board of Supervisors acting for the County of San Mateo, that the said Southern Pacific Railroad Company shall pay into the treasury of said county, on account of the cause of action stated in the complaint, the sum of \$7,613 30 in addition to the sum paid to said Rhodes & Barstow, the same being sufficient to more than pay the full amount claimed for taxes, penalties, attorneys' fees, and interest, as shown by the complaint in said action, and by the assessment roll on file in said county.

It is further understood and agreed that when the account is finally settled between the county and Rhodes & Barstow, an account shall be stated, based upon said complaint, and on the assessment roll, of the principal, interest, delinquency, and attorneys' fees, and also of the payment made to Rhodes & Barstow, and that the payment in excess of the true amount due shall be returned to the said Southern Pacific Railroad Company, it being the intention of the parties that the whole tax, interest, and attorneys' fees, shall be paid, and the remainder of the payment be returned to the said Southern Pacific Railroad Company.

In testimony whereof the parties hereto have signed this agreement in duplicate, this eleventh day of December, 1885.

[Signed:]

SOUTHERN PACIFIC RAILROAD COMPANY.
By CREED HAYMOND, General Counsel.

W. H. LAWRENCE,
A. F. GREEN,
JOHN MULLEN,

Committee of Board of Supervisors of San Mateo County.

[CERTIFICATE ATTACHED.]

I hereby certify, that in pursuance of the foregoing agreement, the said Southern Pacific Railroad Company, on the eleventh day of December, 1885, paid into the treasury of the County of San Mateo, for the uses and purposes mentioned in said agreement, the sum of \$7,613 30, in United States gold coin. I further certify that the County of San Mateo has had the use of the money in said agreement referred to as having been paid to Rhodes & Barstow, since the sixth day of September, 1882; and that the said sums more than pay off and discharge the principal, penalties, attorneys' fees, costs, interest, and all other things claimed in the complaint referred to in the foregoing agreement.

Witness my hand and the seal of the County of San Mateo this eleventh day of December, 1885.

[SEAL.]

GEORGE BARKER,
County Auditor.

MR. HAYMOND: I want to give the committee a chance to examine, and I now refer them to the case of Miller vs. Heilbron, a California case, the

value of which I do not remember, but I will hand it to the reporter, in which they decide that this sort of legislation could not be sustained.

Then I offer in evidence and cite you to the case of the San Francisco and North Pacific Railroad, 60 Cal., page 216, and the case of the Central Pacific Railroad Company vs. the State Board of Equalization, 60 Cal., 135, in which we sought to have that question decided, but in which the objection was made that we were not "persons," and not entitled to the protection of the amendment, and the question went up on that ground, so we did not get an opportunity to have the Court determine whether Miller vs. Heilbron applied.

Then I desire to offer in evidence the oral argument of Roscoe Conkling, who is now dead, made in the Supreme Court of the United States upon this Constitution. I will give that to the reporter and ask him to attach it to this report.

I will also furnish each member of the committee with my argument in that tax case. I will send that to them.

A MEMBER: My understanding of this matter is, that there has been a good deal of matter produced this morning, and time occupied in a purpose foreign to what we came down here for. We came down to look into the records of the United States Courts.

THE CHAIRMAN: But I understand Mr. Haymond simply desires to cite some authorities.

A MEMBER: I intend to go to Sacramento to-night, and would like to have a chance to inspect those records.

MR. STORKE: I move that Mr. Haymond be permitted to simply file with the clerk the papers which he desires to introduce.

MR. HAYMOND: That will be agreeable.

THE CHAIRMAN: If there is no objection, Mr. Haymond will be permitted to file any documents in evidence bearing upon the matter, with the clerk.

MR. DIBBLE: We want to get them in as soon as possible.

THE CHAIRMAN: We want that record now.

MR. HAYMOND: I desire now to offer in evidence a statement by Mr. Ryan, and we will put him on as a witness at Sacramento to support it, that the various railroad companies belonging to this system, since the thirty-first of December, 1879, and up to the thirty-first of December last, have paid, exclusive of the taxation of the persons connected with them, \$3,600,000, and a little over.

MR. STORKE: I request you to bring a statement of the parties to whom those payments were made, if you can.

MR. HAYMOND: That will take a good deal of time, but we have the vouchers, and will submit them to the examination of this committee.

MR. STORKE: I think that would be desirable, for we would like to know where the money has gone.

MR. HAYMOND: I think you will find a good deal of it in the various County Treasuries, myself. We paid it to the proper officers.

MR. STORKE: It is understood, then, is it, that Mr. Haymond is to furnish us with a statement of all parties to whom money has been paid?

MR. HAYMOND: What day will you call Mr. Ryan? It might take a good deal longer. We will give you all that we can make out up to that time.

MR. STORKE: As I understand it, the railroad company has paid on account to various County Treasurers throughout the State sums of money, and some of it ought to have found its way into the State Treasury, but, being refused by the Controller, still remains in the hands of the County Treasurers of various counties.

MR. SALOMON: Whatever has been paid on deposit the company has undoubtedly received vouchers for, and can show them?

MR. HAYMOND: Yes, sir.

MR. STORKE: But there is no tabulated list of the vouchers furnished?

MR. HAYMOND: Our vouchers are scattered through the daily transactions, and it may take some time to find them, but they are all there. If we cannot find them you can appoint an expert to get them. There is another matter that I desire to refer to. A gentleman that I walked down with to-day stated that it appears in the Controller's report of this State that the San Mateo County taxes were not fully paid. As I did that transaction I know that they were fully paid, every dollar. And if it is true that the Controller has stated that, I think it is due to myself that the committee summon the County Treasurer of that county, and allow me to produce the receipts. I telegraphed to the Supreme Court of the United States that the money was paid; that the County of San Mateo demanded it of us and we were under a stipulation to pay it, and we did. It was paid in full, every dollar. I had it done myself, and I therefore know, of my own personal knowledge, that there is no mistake about it. I ask the committee to allow me, as this is a matter which has just come under my observation, to file with them the original receipts.

THE CHAIRMAN: Is there any controversy about that matter?

MR. DUNN: Yes, sir. I am prepared to send to Mr. Haymond an affidavit by the Treasurer of the county that it was not paid.

MR. HAYMOND: I will state that that is unqualifiedly false. This is a very serious matter. It is unqualifiedly false; every dollar of it was paid, and I have the receipts of the proper officers for it. I simply telegraphed these receipts, or something equivalent to it, to Washington.

A MEMBER: It was paid to whom?

MR. HAYMOND: Paid to the proper parties in the very beginning.

A MEMBER: Do you say that it was paid to the County Treasurer of San Mateo County?

THE CHAIRMAN: Mr. Haymond reserves the right to introduce evidence hereafter to explain.

MR. HAYMOND: I cannot recall all of these things, but a portion of that money was paid to Mr. Rhodes in the very beginning. A portion of the San Mateo taxes was paid to Mr. Rhodes, and the balance was paid to the County Treasurer of San Mateo County, and I went to offer them.

MR. SALOMON: Let Mr. Haymond produce in evidence the vouchers, receipts, and whatever he deems necessary at Sacramento. I move that we now proceed to the business for which we came down, and that is to examine the records.

THE CHAIRMAN: If there is no objection that will be the order. Now, Mr. Dunn, we will hear from you.

MR. DUNN: Mr. Lezinsky will present the matter for me.

MR. LEZINSKY: Mr. Chairman, and members of the committee: In connection with this matter, the impression that has been sought to be conveyed to the committee is, that the statement made by Mr. Dunn is, that these records have been falsified; that is, that between the time that these records were made up, and these findings prepared, and an appeal taken in these cases, that this record was changed, or made false, so that the record that went into the Supreme Court of the United States was not the record that was on file here in the Circuit Court. That is not the statement, and that is not the position assumed by Mr. Dunn. The statement and position assumed by Mr. Dunn is this: That these records which involve the taxes of this State and several questions against the railroad

companies are false in the findings and in the facts contained therein, in this, that there are in these findings statements that there was certain property assessed by the State Board of Equalization of these railroad companies, which, as a matter of fact, were not included in the assessment. And in that connection we will produce these findings, and point out the particular findings, and present to the committee the testimony showing that these findings are actually false; and then let the blame rest where it properly should. Furthermore, we intend to show to this committee that it is upon these findings, which are false, that the Supreme Court of the United States did decide these cases against the State of California; that thereby the State of California has been prevented from receiving an opinion of the Supreme Court of the United States as to whether or not this system of taxation now in vogue in this State is, or is not, in violation of the fourteenth amendment of the Constitution of the United States. That is where we say the evil in this matter exists.

MR. HAYMOND: Mr. Dunn assures me, and, of course, I have reason to believe it, that the statements in the newspapers imputing to me any responsibility in that matter, that he never thought any such thing.

MR. LEZINSKY: We say, let the blame rest where it should; let the committee decide where the blame should rest.

MR. HAYMOND: The newspapers have it the other way.

MR. DUNN: I have charged that the records were falsified.

MR. HAYMOND: That ends it as far as I am concerned.

MR. LEZINSKY: It may, or may not.

MR. DIBBLE: I understand Mr. Dunn's position to be this: I understood him to say, in Sacramento, that he charged that these findings had been falsified. I may have misunderstood him.

THE CHAIRMAN: I understood him to say that the records were false and fraudulent.

MR. DUNN [to Mr. Dibble]: Do you remember the second night, at a meeting of the Judiciary Committee, that you made that statement when you had your resolution prepared, and as to this specification, I said you are mistaken in that matter, and I declared that the records were false and fraudulent, and I repeat it.

MR. DIBBLE: Of course, the words "false and fraudulent," if Mr. Dunn were a lawyer, he would not publicly use, because that implies that the Judges of this Court had entered false and fraudulent findings. He does not mean to say that, I suppose. What he means to say is that the findings of the Court, which went up as the conclusions of fact before the Court, were erroneous.

MR. LEZINSKY: Our position is, and we say, that there was no evidence upon these points at all, and that the Court was imposed upon to make fraudulent findings by whomever presented those findings to the Court. That, I say, we will establish by the evidence. The gentleman who presented the findings, that will probably come out in the evidence. I now hold in my hands the papers in Case No. 3668, an action in the Circuit Court of the United States, entitled "The People of the State of California vs. The Central Pacific Railroad Company." This was an action which was brought against the Central Pacific Railroad Company by the people of the State to collect the delinquent taxes for the year 1884.

MR. DIBBLE: Do you appear as a witness?

MR. LEZINSKY: No, sir; as counsel for the Controller. In this case there is an allegation in the answer that the State Board of Equalization, in making up this assessment, blended with other values the values of ferryboats which were owned or purported to be owned by the Central Pacific

Railroad Company, or by individuals, or by some one else; and also the allegation that the State Board of Equalization, in making up the assessment sued upon in this case, designedly and willfully included in this assessment the value of the fences erected upon the lands of coterminous owners to this railroad, and also other defenses. These paragraphs are numbered in these answers, respectively, as paragraphs 25 and 25 A of the answer. There was a stipulation entered in this case that the case should be submitted by testimony offered by the defendant tending to prove the averments contained in Subdivisions 25 and 25 A of said answer, and by testimony offered by plaintiffs tending to disprove the averments in said paragraphs contained.

MR. DIBBLE: That is a part of the finding?

MR. LEZINSKY: No, sir; this is a part of the stipulation as to the findings, made between counsel. This is a stipulation as to the testimony, and what that testimony was. "Upon certain admissions and upon certain testimony," the stipulation says, "offered by the defendant to prove these facts, and by testimony offered by the plaintiff to disprove these facts." In the findings made in accordance with this stipulation, there is a finding which is numbered "Finding No. 22:" "Rules of equity as regards the system adopted by said Board. The State Board of Equalization, in making the supposed assessment of said roadway of defendant, did knowingly and designedly include in the valuation of said roadway the value of fences located upon the line between said roadway and the land of coterminous proprietors." That is entirely in accordance with the statement made by us that we intend, and will show to this committee, that no testimony upon that point was offered whatever, and that, notwithstanding the fact that no testimony was offered upon that point whatever, and notwithstanding the fact that that fact was entirely untrue, that this finding was permitted to be incorporated within these findings, and upon that finding the Supreme Court of the United States rendered judgment in favor of the defendant.

MR. DIBBLE: That is one of the cases that went up?

MR. LEZINSKY: Yes, sir; that is one of the cases that went up, and was decided by the Supreme Court upon that point.

MR. HAYMOND: Do you say that that case was decided upon that point? That question was decided upon the question of the Federal franchise.

MR. LEZINSKY: That point was also involved. The case went off on both points.

MR. DIBBLE: Do they decide both points?

MR. LEZINSKY: Yes, sir.

MR. DIBBLE: Where is that case reported?

MR. DUNN: In 127 U. S. Reports.

MR. HAYMOND: If it won't interrupt you, I would like to ask you who made up the record in that case upon the writ of error?

MR. LEZINSKY: I do not know, but I think I can show who made up the findings.

MR. HAYMOND: Do you know who made up the record that went to the Supreme Court?

MR. LEZINSKY: No, sir; but I propose to show that the findings were made up in the office of the railroad company, and that the Attorney-General may possibly have allowed these things to go in without examination, and thereby have been guilty of criminal carelessness; that these findings were submitted to the Court, and a statement made that they were correct, that thereupon these findings were accepted by the Court and signed. But I say that they were untrue and false.

MR. HAYMOND: Who made up the record in that case?

MR. DUNN: Mr. Johnson had nothing to do with making up that record.

MR. HAYMOND: He made it up entirely.

MR. DUNN: No, sir; that record was made up or prepared and the stipulation was signed by yourself, and by Mr. Brown, Mr. Marshall, Mr. Baggett, and Mr. Waymire. That record was made up here. I speak of the findings as prepared here under the stipulation.

MR. HAYMOND: That was made by Mr. Johnson.

MR. DUNN: Mr. Johnson does not want to be held responsible for that kind of a record. He had nothing to do with it.

MR. HAYMOND: I only want to get it before this committee that Mr. Johnson did make up that record, as I understand it, and took the writ of error in that case.

MR. DUNN: We will put Attorney-General Johnson on the stand when we go to Sacramento.

MR. STORKE: You are both correct. Mr. Marshall attended to the trial of the case below—

MR. HAYMOND: That is another suit entirely.

MR. LEZINSKY: This record was made up in September, 1885.

MR. DUNN: It was Mr. Brown and Mr. Marshall who signed it.

MR. HAYMOND: I speak of the record in the Supreme Court of the United States on writ of error, where the State became plaintiff in error. That record was made up by Mr. Johnson; this was made up by Mr. Marshall.

MR. LEZINSKY: If that record was made up, it is simply a copy of these papers.

MR. DUNN: Mr. Johnson went before the Supreme Court on findings prepared before he came into office.

MR. HAYMOND: It was his duty, if you advised him that anything was wrong about it, to have corrected it.

MR. LEZINSKY: I do not think he could have corrected it.

MR. HAYMOND: I would have stipulated to have it corrected, if there was a mistake.

MR. LEZINSKY: I say not.

MR. HAYMOND: I have no doubt you would say anything.

MR. LEZINSKY: I have in my hand Case No. 3669, which is an action brought in 1884 by the State against the Southern Pacific Railroad Company for taxes for the year, under the circumstances and in which the same state of facts exist, and the statement will apply. I refer to the findings on file in that case, and on page six of said findings we find the following, numbered "Finding 16 A:": "A distance of four miles from the wharf at the end of said defendant's road at Oakland, Alameda County, etc., used for the purpose of said railroad, was assessed to said defendant as four miles of said road, at the same amount per mile as any other equal portion of said road, said four miles across the bay constituting four miles of the aggregate of six hundred and two and twenty-two hundredths miles of said railroad, assessed to said defendant."

We state that that finding is absolute and totally false; that there was no evidence of that kind, and that no such assessment was made by the Board of Equalization.

Also the finding on page nine of these findings, which is numbered "Finding 21 A:": "Rules of equality as regards the system adopted by said Board. The State Board of Equalization, in making the supposed assessment of said roadway of defendant, did knowingly and designedly include in the valuation of said roadway the value of fences located upon

the line between said roadway and the land of coterminous proprietors." That finding I state is absolutely and totally false.

MR. HAYMOND: This testimony should be taken under oath.

MR. LEZINSKY: I am not testifying. Your statement was not taken under oath. I say these are facts that we expect to prove.

A MEMBER: Do I understand counsel expects to introduce the evidence as introduced into the Court to prove to us that these findings were not sustained by the evidence introduced?

THE CHAIRMAN: Yes, sir.

MR. DIBBLE: Where is that evidence in these cases?

MR. LEZINSKY: I say there was no evidence taken in the cases whatever.

MR. HAYMOND: You testify to that, do you?

MR. DIBBLE: The question is: was there any evidence taken in these cases at all, to show that these things were done?

MR. DUNN: No, sir.

MR. HAYMOND: I promise to convict the man of perjury who testifies to that before this committee. If these gentlemen are stating now that they expect to prove this thing, that is one thing; but if they state them as facts, that is another thing. If they state them as facts I want them under oath, and then I will agree to convict them of perjury.

MR. DUNN: I will now agree to go on the stand and give testimony that the State Board of Equalization in 1883, 1884, 1885, 1886, 1887, and 1888 did not assess fences; did not assess steamers; did not assess the four miles of water across the bay as four miles of railroad, and I defy you to convict me of perjury.

MR. SALOMON: It seems to me that our work here this afternoon is simply the reception of documentary evidence. I understand it perfectly well, I think, and there is no use of getting into a dispute about it. I understand these gentlemen to say that these findings here find upon testimony apparently showing that the fences had been assessed. He says there was no such testimony. That can easily be ascertained, whether or not there was any such testimony. Mr. Haymond did not say that he would convict any man of perjury who said it was so, but who swears that there was no such testimony. All that is necessary is to present these findings, and then to show that no such testimony was taken. If those findings were arrived at without testimony, then there is something wrong, but if there was testimony taken and the findings were based upon testimony, that settles it.

THE CHAIRMAN: My understanding is this: let this documentary evidence go in, and then the gentlemen can produce the evidence.

MR. DIBBLE: I will make this suggestion, which I think the committee will appreciate. There is no necessity of going through any of these records, except those that went to the Supreme Court, because it is of no consequence to us unless there was some wrong effected by the fact which they complain of. I suggest that they simply offer in evidence the findings in these that went on appeal to the Supreme Court, because we must bear in mind that we have but a few days more of this Legislature, and this testimony has all got to be printed, and we do not want it to be too long.

MR. LEZINSKY: The testimony we have to offer, and the statements we are making is very short, and all of these cases can apply one to the other.

MR. DIBBLE: Did they all go up on appeal?

MR. LEZINSKY: No, sir.

MR. DUNN: Mr. Haymond has made a long statement. I admit that the case of the Southern Pacific Railroad Company and the Central Pacific Railroad Company was decided upon the question of the assessment of a Federal franchise. But you must also take this matter into consideration,

for before these cases went to the United States Supreme Court there was a decision in the San Bernardino County case and the Santa Clara County case, and two or three others, where the Court declared that because the State Board of Equalization included the fences, no taxes could be collected. Was not this part and parcel of a scheme to get the same kind of a record in these cases, to have the Supreme Court shut us out again on the question of taxes?

MR. HAYMOND: I will answer that question now. The Santa Clara case has not been decided.

MR. DUNN: But why put into the record a statement that the Board of Equalization assessed things that they did not assess?

MR. HAYMOND: I think that your attorney stated in the Supreme Court in 1885, after this record was made, that you had assessed the fences, himself; not as a proposition of fact, but in order to maintain that construction as a cotemporaneous construction, and claimed that it was right; stood there in the presence of that Court, under the sanction of his oath as an attorney, because he was stating facts of which the Court would take judicial notice, if true, to get a cotemporaneous construction; he stated in the presence of the Court—that was in 1885—that the State Board of Equalization had always assessed the fences, and that it had always been insisted that those fences were assessable.

MR. DUNN: I will put Mr. Delmas upon the stand——

MR. STORKE [Interrupting]: We are not getting along with our work. It seems to me that we are here to determine whether or not any official of the State has been derelict in his duty. It makes no difference whether it was in one of the cases that went to the Supreme Court, or in one of the cases that did not go to the Supreme Court. I would like to see the record of all these cases.

THE CHAIRMAN: Yes, sir; I would too, but the object is to get this documentary evidence before the committee.

MR. LEZINSKY: In Case No. 3670, which was a case in the same year, and a case against the San Pablo and Tulare Railroad Company, which was not a corporation holding any franchise from the Federal Government, the same finding is incorporated in these findings, as to the fences: that is, that the value of the fences was included in the value of the assessment. That finding, we state, is absolutely and totally false. Therefore, to take an appeal in these cases after the decision of the Supreme Court saying that such assessment was void, and it appearing upon the findings that such an assessment had been made, it would be simply making a useless effort, because when the cases got into the Supreme Court of the United States, the judgment would be again affirmed for the defendant, and would be affirmed upon a finding that was totally untrue. In that case there was no Federal franchise to the San Pablo and Tulare Railroad Company whatever, but still there was a finding that the value of the fences had been included in the assessment. That was not appealed for the reason that if an appeal had been taken it would have been decided against the People, upon that finding.

MR. SALOMON: Do you mean that the findings are contrary to the evidence?

THE CHAIRMAN: Yes, sir.

MR. LEZINSKY: We are not attacking the findings, but the action of these officials in permitting these findings to be made, and I say that is criminal carelessness. I now have in my hand the record in the Case No. 3263, which was an action brought by the People of the State against the Central Pacific Railroad Company to collect the delinquent taxes for the year

1883. In the answer filed in this case, there is an allegation that the value of the steamboats was included in the value of the railroad, and that the values of the fences were included. And there was a stipulation in this case, "And it is further stipulated that, upon the issue of whether, in the assessment in this case mentioned, the distance across the Bay of San Francisco, from Oakland to San Francisco, was included in the length of the Central Pacific Railroad as assessed, the attorneys for plaintiff may file in the case a sworn statement of the Clerk of the State Board of Equalization, which statement, if filed, shall be conclusive upon the issue of whether or not the value of fences were included by the Board in the assessment of property described in the complaint." Now, I state in connection with this case that no such sworn statement ever was filed; and, notwithstanding the fact that no such sworn statement ever was filed, that still there was a finding upon those issues, and a finding which was absolutely and totally untrue—

MR. HAYMOND: Is that a statement of fact?

MR. LEZINSKY: Those are facts which I intend to prove and expect to prove as I state them. I will state them, and I expect to prove them as I state them.

MR. DIBBLE: Here is all the evidence. [Referring to a volume of California Reports.] It is all here.

MR. HAYMOND: The case occupied several days in trial; Mr. Delmas tried the case.

MR. LEZINSKY: In this case the findings make this statement: "Said assessment included all property and kinds of property mentioned in Section 3665 of the Political Code of California, as amended March 9, 1883, except depots, stations, ships, buildings erected upon the places covered by the right of way; which last mentioned property was assessed as provided in said section, by local appraisers." Section 3665 provided for the assessment of steamboats; and here is a finding that the assessment included all property and kinds of property mentioned in Section 3665. And we state that no such property was included within the assessment, and designedly, and with express intention of preventing any such confusion, the State Board of Equalization, after mature deliberation, decided that they would expressly leave out any such values in making up their valuation of the property owned by these railroad companies; the Supreme Court of this State having decided in June, 1883, that steamboats should not be assessed by the State Board, but by the respective County Assessors in which the vessels were enrolled. These were the taxes for 1883.

MR. HAYMOND: When was that assessment made in 1883, at what time?

MR. DUNN: In August, 1883.

MR. HAYMOND: That is the tax then for 1883-84?

MR. DUNN: No, sir; for 1883 alone.

MR. DIBBLE: When was the decision of the Supreme Court of this State rendered?

MR. DUNN: In June, 1883, prior to the meeting of the State Board of Equalization that year.

MR. HAYMOND: Then that was the assessment for the fiscal year 1883-84?

MR. DUNN: Yes, sir.

MR. LEZINSKY: I now have in my hand the record in Case No. 3265, which was an action by the People of the State against the Northern Railway Company, a case which was appealed to the Supreme Court of the United States. In this case the answer alleged that steamboats had been assessed, and also that the fences had been assessed. The printed findings as first prepared had in them a finding that the value of the steamboats

alleged in the answer had been included in the assessment. But that finding was stricken out by the Judge on the ground that there was no evidence to sustain that finding. But in the subsequent year, the taxes in the action brought for the taxes of the subsequent year, No. 3672, which was an action against the same corporation for taxes for the year 1884, the finding is contained at page 6 of the finding, as follows: "Finding 11. The distance of one mile from Benicia across the Straits of Carquinez to Port Costa, over which freight and passengers are carried by said defendant upon steamers of said defendant, and used for the purposes of said railroad, was assessed to said defendant as one mile of said road at the same amount per mile as any other equal portion of said road; said one mile across said straits constituting one mile of the aggregate one hundred and fourteen miles assessed to said defendant."

This is Case No. 3672, a case against the Northern Railway Company, and that was a corporation which did not hold its franchise from the Federal Government. It was a case which, if the record was proper, could have been appealed, and the point which the State has striven time and time again to have decided could have been decided; that is, whether or not the system of taxation in vogue in this State to-day, and which has been in vogue since the new Constitution was adopted, is or is not valid in so far as it does or does not violate the fourteenth amendment to the Constitution of the United States. In this case the findings were permitted to contain the finding that the one mile across the straits was assessed as railroad property, which was absolutely and totally untrue; also, that the value of the fences was included in the assessment, as is found upon the subsequent page of the findings, and is numbered Finding No. 12 A. This case did not go to the Supreme Court, for the reason that the findings being in this shape, an appeal would have been futile. When the Supreme Court has decided that where the value of steamboats and fences have been included in the assessment the assessment is void, why should an appeal be taken upon such a statement of facts? The record was false. If the record had not been false then the case could have been appealed, and the Supreme Court could have determined whether or not, in view of the other facts, there was or was not then in vogue in this State a system of taxation, whether or not, as to railroads, it was or was not valid, upon which point a decision of the Supreme Court has never been able to be obtained.

A MEMBER: Do you contend that the findings of that fact were the result of a stipulation?

MR. LEZINSKY: No, sir; but I say that these findings were presented to the Court, and that the Court found these findings; and that some official, or some person, was guilty of negligence, or something worse, in presenting such findings to the Court, when the testimony would have established, and when the testimony was absolutely to the contrary.

A MEMBER: Was there any testimony in the case showing that that mile of railroad from Martinez was included in that one hundred and fourteen miles?

MR. LEZINSKY: No, sir; if there was it was absolute perjury.

A MEMBER: Was there any such testimony to show whether or not that mile was referred to in the testimony, or in the proof?

MR. LEZINSKY: No, sir.

A MEMBER: And you say that is contrary to the testimony?

MR. LEZINSKY: No, sir; I do not say it is contrary to the testimony, but contrary to what should have been the testimony in the case.

MR. DIBBLE: That is a different proposition.

MR. LEZINSKY: There was no testimony at all. And, more than that, as

a rule of law, this was a matter of defense. That was an allegation by the defendant of a matter which had been stated by him; therefore, there must be testimony introduced by him to prove that allegation; and the rule of law is that without such testimony no such finding could be embodied.

MR. DIBBLE: There is no such rule of law. Findings may be based upon the testimony of either party to the suit.

MR. LEZINSKY: That may be.

THE CHAIRMAN: But the allegation is presumed to be denied.

MR. DIBBLE: But the Court may find it upon the testimony of either party.

THE CHAIRMAN: Of course it may, but it is presumed to be denied.

MR. LEZINSKY: There was a cross pleading set up by the defendant.

MR. STORKE: It is alleged that that distance of one mile is a part of the road?

MR. LEZINSKY: It is alleged that that was assessed by the State Board of Equalization as a part of the road.

A MEMBER: What is the allegation of the plaintiff?

MR. LEZINSKY: The complaint simply is a formal complaint for taxes. It does not describe the road, but it follows the statutory form of a complaint for taxes; alleges that a certain amount of taxes are due; so much for State and so much for county taxes.

MR. DIBBLE: The answer sets up that there was an improper assessment.

MR. SALOMON: The complaint undoubtedly states that certain property had been assessed to such and such an amount—

MR. LEZINSKY: Yes, sir.

A MEMBER: Is there any record evidence in that case?

MR. LEZINSKY: I believe not. I say that no testimony was taken.

THE CHAIRMAN: The testimony as to that will be taken hereafter.

MR. LEZINSKY: This case was supposed to be tried here in the Circuit Court.

MR. DIBBLE: In this case you have referred to, I will call your attention to the fact that it was not decided upon the question of fences at all.

MR. LEZINSKY: In the case against the California Pacific Railroad Company, which was a case for the same year and in which the same state of facts exist, with this difference, that in Case No. 3671, of *The People vs. The California Pacific Railroad Company*, the finding is: "That the distance of two miles, from Vallejo Junction to Vallejo, over which freight and passengers are carried by said defendant, upon steamers owned by said defendant, and used for the purpose of said railroad, was assessed at and as two miles of said road, at the same amount per mile as any other equal portion of said road. Said one mile (evidently a mistake) across the said straits, constituted two miles of the aggregate of 112.50 miles of said railroad assessed to said defendant, and in so assessing said two miles, the said Board followed a statement filed by said defendant, and made such assessment in accordance therewith."

On page 7 is also a finding which is numbered "Finding 12 A;" which is that the State Board of Equalization included in the value of the assessment the value of the fences, and in connection with this matter, to show that there is something more than mere carelessness in interpolating findings of this kind into these findings, there is underneath this slip upon which this finding is contained, pasted on to these findings, a pencil memorandum: "Objected to; no evidence." And as to the most of these other findings, there is on the margin a pencil memorandum of "No evidence to support this finding." So particular attention is called to it. Notwith-

standing that fact, this finding is put in, and made a part of the records in these cases, so as to cut off any right of appeal, because, if an appeal were taken the natural presumption would be that such an appeal would be futile, as the judgment of the upper Court of which these are findings, was in that condition.

A MEMBER: Who put that pencil memorandum on there?

MR. LEZINSKY: I do not know.

A MEMBER: Is that a part of the record?

MR. LEZINSKY: No, sir; except that the committee might take it into consideration that somebody's attention was called to it.

A MEMBER: My recollection is that a statement was made by the Controller, at the joint meeting of the two Judiciary Committees, that the case which was taken to the Supreme Court of the United States was reversed, on the ground that the assessment was invalid, because it included fences and steamboats. And the further statement was made by him that those findings were false, and not sustained by the evidence. My understanding of the committee's action was that we should investigate that case, or those cases. I ask the pertinency of going into all of the other cases which were not taken to the Supreme Court of the United States, and upon which there has been no ruling. I think we should confine ourselves to those two cases, as those are the cases directly spoken of by the Controller.

THE CHAIRMAN: We want enough witnesses to ascertain whether or not any state officer has been derelict in his duty.

A MEMBER: I think we should confine ourselves to the cases spoken of by the Controller himself.

MR. SALOMON: That pencil mark refers to a finding that is stricken out.

A MEMBER: My understanding of this case is, that this testimony offered in these other cases which have not been carried up is, to show that, by reason of false findings in these cases, the State has been barred from pressing the claim to a final conclusion; that they had no reason to carry it up after the false findings got into the records here in the lower Court; that it operated as a bar, as the United States Supreme Court had decided against the State by reason of there being in those cases.

ANOTHER MEMBER: The resolutions recite the fact that certain charges have been made by the State Controller. Now, they have incorporated the charge of the State Controller that certain cases went to the Supreme Court of the United States. Those are the cases we were then considering in joint meeting of the two Judiciary Committees. A statement was made during the argument of counsel, by the Controller, that those cases ought not to be precedent for the action of the committee, for the reason that the Supreme Court of the United States reversed them on the ground that the assessments were invalid, which judgment was based upon certain false findings. And the purpose of our investigation here, I understand it, is, to ascertain whether or not those findings in those cases were false; to ascertain that the findings in some other cases were false will not assist us, unless there is a general stipulation which covers all these cases.

MR. LEZINSKY: There is a general stipulation.

A MEMBER: We have come down here to ascertain whether or not any officer of the State has been derelict in his duty, or criminally careless. We can ascertain that by investigating one of these cases that has not been carried to the United States Supreme Court, as well as those that have been carried, provided we find the false findings in any of the cases.

THE CHAIRMAN: We will take the evidence now, as we are here.

A MEMBER: I am informed that in these cases that have been carried up, that there was a stipulation to the effect that a decision in the cases

carried up should govern in relation to all of the others, so that a decision against us in the one case, necessarily there was no use of carrying up the other. But still we wish to ascertain whether there was any dereliction on the part of any official of the State in any of these findings.

MR. DUNN: I think my statement was that there were findings that fences had been assessed, and that steamboats had been assessed since 1883, whereas no such assessments have been made by the State Board of Equalization. I also stated that the case against the Central Pacific Railroad Company and the Southern Pacific Railroad Company went off upon the question of Federal franchise, but that the case against the California Pacific Railroad Company went off on these questions that were based upon records that never should have been placed in the Court, and never should have been in the findings, because they were based upon a statement that the State Board did things that they did not do.

A MEMBER: Did not that statement come in connection with this point, that there had been cases sent to the Supreme Court of the United States—we were then discussing why this had not been decided by the Supreme Court—and did you not rise in the committee and say that there had been two cases decided by the Supreme Court of the United States, but none of them upon the constitutional question, but upon the ground that the findings recited facts which were false?

MR. DUNN: No, sir. I refer to the case of the California Pacific, in Volume 127 of the U. S. Reports. And my statement was, that the Supreme Court of the United States never did decide the question that the railroad attorneys had been constantly telling the people of this State they were anxious to have them try and decide, and that was whether our system of assessments was a violation of the fourteenth amendment. And I said they will not decide upon that point, because every case that has gone up—the case of the Southern Pacific and of the Central Pacific—the last two cases, contain an assessment of fences and steamboats, the distance across the bay, etc. And the only time there has been anything like an approach to a Federal question was in the last decision of the Supreme Court of the United States, in the case of the Central Pacific Railroad Company and the Southern Pacific Railroad Company, where it was found that the State had assessed the Federal franchises. Those are the only two cases.

A MEMBER: That is the reason I think we should confine ourselves to those two cases.

MR. DUNN: The California Pacific case went up there and that did not contain any Federal question.

A MEMBER: I will offer a suggestion, to expedite matters. I believe there is no difference of language as to the findings; and we know what the record shows the findings are. Now the question for us to investigate is, does the evidence sustain those findings?

MR. DIBBLE: Can Mr. Lezinsky tell us who were the witnesses examined in those cases?

MR. LEZINSKY: I say that no witnesses were examined. We do not expect to try these cases, but to put members of the Board of Equalization upon the stand to show that they were not called as witnesses, and that statement is absolutely untrue.

MR. DIBBLE: But that would not touch this question. The only question we can examine upon this inquiry is, whether there was testimony in this case to show that the franchise was assessed.

MR. LEZINSKY: No, sir; that is not it. The matter to be investigated is, has any officer been derelict in his duty, in permitting such a finding to be made, when the testimony was to the contrary?

MR. DIBBLE: The only way to ascertain that is, to learn what testimony was offered in the case.

MR. HAYMOND: I will make a little explanation now, and I think I can straighten all of this out. The first case which went to the Supreme Court was argued there, the San Mateo case was the same, in Volume 118 of the Reports, a case which was tried. I told you that the San Mateo case was assailed, and at the instance of the State, five cases were tried here in the Circuit Court of the United States. I was absent in Europe during those trials, but Mr. Delmas conducted that case for the State, or for the Controller. There was a trial of that case, and it took several days, perhaps a week, to try and argue it here. That case was decided against the State, and a writ of error was taken. In that case, hotly contested upon both sides, where all of the evidence was introduced—I do not know whether it was reduced to writing or not, as there is no shorthand reporter in the Circuit Court, and it may or may not have been reduced to writing. That case was tried by Mr. Delmas, assisted by Mr. Marshall. Mr. Delmas, I believe, had full control and charge; it was before the difficulty occurred between those gentlemen who were conducting this case for the State—

MR. LEZINSKY [Interrupting]: If you will permit me to interrupt you as to the testimony, it has been inquired what would be introduced to prove these assertions. What we expect to do is this: to put upon the stand every attorney who had any connection with these cases, and if such testimony was introduced in the case, that they shall upon their oaths tell who gave that testimony, when that testimony was given, and what was the character of it; then the committee can for itself judge as to whether or not any such testimony was given, and if so, who gave it and what was the character of it. That is the only way in which that matter can be determined, and we shall do that.

MR. HAYMOND: I have told you the history of the San Mateo case, and that that was set aside. The Supreme Court then ordered five cases to be tried and they were tried here, contested cases in Court. Mr. Delmas and Mr. Marshall conducted the cases; Mr. Delmas was the chief counsel, and we all know how he conducts a case. They took the writ of error in one case, and the Supreme Court would not advance it; then they took a writ of error in the others, and took up the five cases. That was done in the first place, because the Court ordered it to be done. That was a contested case fought over, and I have always understood that testimony was taken upon both sides. Mr. Delmas conducted that case; it reached the Supreme Court for argument on the twenty-sixth, twenty-seventh, twenty-eighth, and twenty-ninth of January, 1886, long after these records were made up in this Court, and long after these records had become a finality. Bear that in mind. In that case, the Court found, as a matter of fact, that the fences had not been assessed in the assessment, but that they had been included in the valuation of the franchise. They found that as a matter of fact. Now, I undertake to say that Mr. Delmas was not an attorney who would have allowed that finding to stand, if there had been no evidence to support it.

MR. LEZINSKY: In the case of 1881 and 1882 there was evidence to support that finding in those cases; that is in the Santa Clara cases. In those cases there was evidence to support that finding in this way; you are wrong.

MR. HAYMOND: I desire to make my statement. The gentleman does not know anything about what he is talking about. That case was tried, and Mr. Lezinsky says there was evidence in that case to support that finding. That was away back. But that case came up in 1886, and the

Supreme Court of the United States never decided any of the cases prior to that, except those cases that were there upon questions as to whether they were there or not. That finding was in that case, and we said it was fatal to it. Of course, the State had brought that question in; it was not in the San Mateo cases. When we got into the fight and contest with the State, where it was sword to sword, the case was tried; the State made its case, and we made ours. Nobody that I ever heard of imputed to the Court or to the lawyers or anybody else in that case any unfairness on either side. Mr. Delmas believed that the fences were properly included in that assessment. He staked his case upon his opinion of the law, and went to the Supreme Court, and attempted to establish the fact by the law itself, by the judicial decision of this Court, or he could establish it in some Court by what we lawyers call contemporaneous construction, and the Court takes judicial notice of contemporaneous construction, and it don't have to be proved. Like all other facts of which the Court takes judicial notice, it informs itself by looking into books or the authorities or taking the statement of counsel, which, of course, is made of his own knowledge as to what those facts are. For instance, if a man would say that the sun rose at six o'clock, or half-past six, the Court takes judicial notice of that fact, but it has to look to some place to find it. If I were a Judge, and a reputable man would state to me that it rose at six o'clock, I would accept that, of course, nobody contradicting.

Now, Mr. Delmas understood that that was the law, and in 1886, long after all of these records were made up here, and long after Mr. Marshall and these men had agreed to these findings or had tried these cases, because they were all tried, long after they had tried these cases, Mr. Delmas said in the presence of the Supreme Court—made a statement which, had it been false to his knowledge, would have debarred him from ever practicing at the bar of that Court or any other; not a statement of what the record contained; not a statement of what the judicial decisions were, which could have controverted, but a statement of the fact that one department of this Government—

MR. LEZINSKY: Are you now under oath?

MR. HAYMOND: I am making a speech; but I will be put under oath. I am speaking from the record.

MR. LEZINSKY: When I was making my statement here, Mr. Haymond constantly objected to what I stated, on the ground that I was stating facts, not under oath. He is now making a statement about Mr. Delmas, and I say that Mr. Delmas did not make any such statement—

MR. HAYMOND [Interrupting]: Then I will read it from the record.

MR. DIBBLE: There it is in the book.

MR. HAYMOND: You will bear in mind that statement. Mr. Delmas attempted to tell that Court how one department of this Government had uniformly considered that law; he endeavored to convey to them the facts of which they were bound to take judicial notice, because contemporaneous construction by the Legislature, or any department of the Government, has a bearing upon the construction of the law. The statement was made by Mr. Delmas, taken down by the shorthand reporter, published in his own arguments, distributed all over this State, and entered on record in the record of the Supreme Court of the United States, to endure forever as a fact beyond all contradiction.

Now, bearing in mind that this case was argued for three days; that it was the only case there touching this question; on the twenty-sixth, twenty-seventh, twenty-eighth, and twenty-ninth of January, 1886, and decided on the tenth of May, 1886, long after these records, he says: "I now take

leave of the Federal questions," and if you will turn to his argument you will find it was as able a one as could be made. He distinguished himself in the argument, and added to the laurels which he already wore, as one of the first men at the bar of this State. He says: "I now take leave of the Federal questions in this case; leave it to examine briefly some minor points which include no question of constitutional law, but refer to modes of procedure under the statutes of the State. Objection is made to recovery here, because it is claimed that fences on the line of the road were improperly included in the assessment of the roadway, because, in the first place, they were not proven to be the property of the defendant, and secondly, that they were not within the jurisdiction of the Board of Equalization. It is said that the plaintiff ought to have proved that the fences belonged to the defendant. A prima facie case made out by the defendant's documents established everything necessary to its recovery, among which is, that the property assessed belongs to the taxpayers assessed, referring to the assessment roll, and the rule of the statute that it shall be prima facie evidence, besides the general rule that fences belong to the railroads whose roadway they inclose.

"The defendants, in rebuttal of plaintiff's prima facie evidence, have not proved that they do not own the fences. All presumptions, then, arising from the plaintiff's prima facie case, remain standing in full force. Such fences are not enumerated by the Code among the things necessarily assessable by local assessments. Those are the depots, the station grounds, shops, buildings, and gravel beds. Unless the Legislature intended that they should be taxed, they are to be assessed by the Board of Equalization as a part of the roadbed. Fences built upon the line of the roadway are a part of the roadway, and necessary to its protection; as much so as the railing of the bridge is part of the bridge, or the framework of a tunnel is part of the tunnel. Such has always been the understanding of the law in California, and fences have always been assessed by the Board of Equalization. I have never been able to grasp the proposition that fences are not a part of the railway which they inclose.

"If the defendant made a conveyance of its railway, from San Francisco to San José, to the plaintiff, would not the fences pass by the deed? Clearly so, as much as the sale of my garden would convey the fences which inclose the garden."

Now, there is a statement of the attorney for the plaintiff in this case. Bear in mind I do not pretend to say what testimony was given in that case; I was not there, and know nothing about it. I only assume that Mr. Delmas was too good a lawyer to allow the findings to stand without making an attack upon them, if there was no evidence to support them.

MR. DUNN: Do you want me to explain how those findings were found in this Court?

MR. HAYMOND: No, sir; I do not care about that, because we might get into a controversy as to what findings were.

MR. LEZINSKY: There are some futher facts that the Controllor desires to set before the committee in his statement. I think we had better get in those records.

MR. HAYMOND: I will soon be through. On the seventeenth of February, 1885, before the case was argued, Mr. Marshall and Harvey Brown, the attorney for the railroad company, made this stipulation upon which these cases, among others, were decided: "It is hereby stipulated by and between the plaintiff and defendant in the above entitled action, that a trial by jury is waived, and it is further stipulated that the above entitled action," etc. [Reads stipulation.] Without knowing anything about the facts I will

suggest that you call the Attorney-General or Mr. Baggett, and you will find that the findings were prepared by Mr. Brown on the part of the railroad, as findings are always prepared by the attorneys of the prevailing party; submitted to them, and they probably indorsed this memoranda, that they objected to these findings, and in that event the findings were settled by the Court itself wherever they objected; and wherever they agreed, the Court said "That is sufficient." Then Mr. Baggett, or somebody connected with the Attorney-General's office, probably said, "We do not agree to that or this," and then it was settled by the Court.

MR. DUNN: The findings in the Santa Clara case as to the assessment of fences was made up this way: There is nothing in the records of the State Board of Equalization since the year 1881, or since the assessment that was made under the present Constitution, showing that fences were assessed. But in the Santa Clara case two or three members of the State Board of Equalization were put on the stand here, and I was present during a part of the time, and they declared that in their opinion they thought that they had assessed the fences; had included the value of the fences in the right of way. Mr. Markley, a member of the State Board of Equalization from 1883 to 1886, and Mr. Maslin, the Clerk of the State Board of Equalization, were here during the entire time this testimony was had. And when they met in August, 1883, to assess the railroads, we had this before us—and I think Mr. Gildea can bear me out—I think that I was the person who made the suggestion, "Now, let us talk about this question of fences, so that we will be in a position to declare whether we do or do not assess the fences. Let us purposely determine not to do it," and it was so determined. There has been a wrong done to some considerable extent in these cases. The cases of 1883, 1884, 1885, etc., that were made up under our assessments, were to be submitted to this Court upon the evidence submitted in the Santa Clara case; and that evidence was that the fences were assessed. We had that before us, and we purposely determined not to assess fences, and yet this record contains that very evidence.

MR. HAYMOND: Then it contains it properly, under the stipulation.

MR. LEZINSKY: I desire, also, to call the attention of the committee to some of the subsequent cases in connection with this matter, based upon the statement made by Mr. Haymond this morning in connection with these cases; and if I should digress a little from what this question is, it is simply that the committee, in making this report, may report upon some step that may be taken in order that this question may properly be brought before the Court for its determination. In case No. 4014, which was an action brought for the taxes for the year 1885 against the Central Pacific Railroad Company, the judgment was for the defendant, the case was appealed, and the decision went against the State, upon the question and upon the decision that in making the assessment there was included the value of the franchise, which was from the Federal Government, and therefore that the assessment was void. Now, in the other cases brought for the same year, to wit: the case against the California Pacific, and against the Northern Railway Company, and against the San Pablo and Tulare Railroad Company, a stipulation was made that the trial and findings of fact are waived, and that the decision should be the same in those cases as in this case of the Central Pacific; provided, however, that if the case should be decided upon some point not involved in those three cases, that the judgment should be set aside, and that findings should be had in accordance with the matters put in issue in that case; and that thereupon an appeal could be had, so that those cases might be determined upon their individual merits.

MR. HAYMOND: Who made that stipulation? A. I think it was by the Attorney-General.

MR. LEZINSKY: That stipulation was made then by the Attorney-General and yourself. It is signed Creed Haymond and Edward Marshall, Attorney-General. This is the stipulation. [Showing.]

MR. HAYMOND: That is the stipulation I am speaking of.

MR. LEZINSKY: The stipulation is as follows. I will read from the San Pablo and Tulare case, No. 4016: "It is hereby stipulated that a jury trial be hereby waived, and said case may be submitted to the Court upon the testimony referred to in the stipulation this day made and filed in the case of the Central Pacific Railroad Company, subject to the same terms and conditions. And it is hereby further stipulated that special findings of fact in all of the above entitled actions are waived. It is hereby further stipulated and agreed that the said case of the people against the Central Pacific Railroad Company shall, by the losing party, be taken to the Supreme Court of the United States, and that the decision of said Court in said case shall be applicable to and be treated by such party as the decision of said Court in the above entitled actions, it being the intention and desire of the parties hereto to save expenses of separate writs of error, and that all of the above entitled actions shall abide the final decision of the said Supreme Court of the United States in the said case of the People vs. The Central Pacific Railroad Company; provided, that said decision shall be made upon points involved therein, and if not so made, the judgments in any of the above cases in which the point is involved shall be set aside, and the finding of facts therein shall be made." Therefore, the decision in the case against the Central Pacific having been upon the point of the Federal franchise, as that point is not included in the case of the California Pacific Railroad, or the Northern Railway, or the San Pablo and Tulare Railroad, the judgment in those actions shall be set aside, and findings in those cases shall be prepared, which shall be proper findings; that thereupon an appeal shall be taken in those cases, in which at least the decision shall be had upon the question of whether or not the system in vogue in this State for the taxation of railroads is or is not in violation of the fourteenth amendment of the Constitution of the United States. These gentlemen tried these cases in 1885; here a solution of these questions can be had. Shall these judgments be permitted to stand, when there has been a stipulation in a case upon which a decision had been rendered upon a point not involved in these cases? The stipulation says that it shall not be.

A MEMBER: Why didn't the State take advantage of that stipulation?

MR. LEZINSKY: I don't know. You shall ask that of the Attorney-General. I say that the Attorney-General has been derelict in this matter you are investigating. Has there been a public officer derelict in his duty in the management of these cases?

THE CHAIRMAN: I think that is pertinent to the point.

MR. LEZINSKY: Could or could not a decision by any possibility have been arrived at upon this point? There it could have been had, and there it should have been had. There is a case in position to get it. It is the suggestion of counsel for the railroad that a case at present hanging in the State Courts shall be tried, or shall be passed upon, and then an appeal taken to the Supreme Court of the United States in that case; instead of that this proceeding should be taken: that a judgment framed upon a point not involved in them shall be permitted to stand.

MR. HAYMOND: I have stipulated to do just what you say you want to do.

MR. LEZINSKY: I am not questioning your acts, but I question the acts

of any one who permits this judgment to stand, and who does not have findings before the Court which are proper findings in these cases, and then take these cases to the Supreme Court of the United States, and get a decision in these cases that these cases should have.

MR. STORKE: I submit that if the Attorney-General's attention was called to it he would do so.

MR. LEZINSKY: This is Mr. Marshall's stipulation. Mr. Marshall had charge of these cases, and Mr. Marshall should have attended to this matter. The Central Pacific case that went to the Supreme Court was decided by the Supreme Court of the United States in 1886.

THE CHAIRMAN: Was not that after Mr. Marshall went out?

MR. STORKE: No, sir. Mr. Marshall went out in January, 1887. That was decided in April or May, 1886. It was about the expiration of his term.

MR. LEZINSKY: So far as the records in these cases are concerned, I have almost presented all of the points involved in the record. Now, as I have stated, it will be the course of the parties representing the Controller in this matter to place upon the stand all the attorneys, and every person having any connection with what was called the trial of these cases, in order that they may, under oath, state to this committee who gave the testimony which establishes those findings, in order that it may be ascertained whether any such testimony ever was given. We are called upon to do that.

A MEMBER: What do you say was the point upon which the Central Pacific case was decided?

MR. LEZINSKY: Upon the point that the franchise which the Central Pacific Railroad Company held was a franchise from the Federal Government, and therefore was not involved in the other three cases, because they held their franchise and power from the State of California. In connection with that matter, as Mr. Baggett is now present before the committee, and as Mr. Baggett was one of the attorneys of record in this matter who, perhaps, was present at the trial, I would ask that Mr. Baggett be placed upon the stand, in order that he may give his testimony as to what this testimony was which supported these findings. I want to call his attention to those findings.

A MEMBER: I suggest that Mr. Lezinsky ought to have some time upon this question, as Mr. Haymond has used the greater portion of the day.

THE CHAIRMAN: Of course there will be a great deal of this oral testimony given at Sacramento.

W. T. BAGGETT.

Called and sworn.

MR. LEZINSKY: I would like to ask you, Mr. Baggett, whether or not you represented the State in the position of counsel in suits numbered 3668, 3669, and 3670; those are the suits for the collection of taxes for the year 1883 and 1884? Answer—In 1883 I was the attorney, but not in 1884.

Q. In these cases there is a finding that the State Board of Equalization, in making its assessment, included in the assessment all of the property belonging to the railroad mentioned in Section 3665 of the Political Code? A. Yes, sir.

Q. Now I will ask you upon what testimony that finding was made. There were five of these cases, and we will take the case of *The People vs. The Central Pacific Railroad Company* for that year? A. I cannot recollect whether the assessment roll was introduced in that case or considered in that case or not, but all of the cases for that year—and I think there

were five suits—as well as I remember, were submitted upon a stipulation entered into between the Attorney-General and the attorney for the railroad people, to the effect that all of the testimony which had been taken in the case that had been tried here at great length by Mr. Delmas—the case called the Santa Clara case—that all of the testimony introduced in that case, which was applicable to the cases then being tried, should be considered before the Court. The purpose then was to get the matters in such shape that the money might be paid which was tendered to the Attorney-General by the railroad people, that it might be paid into the Treasury. The railroad people insisted that some trial should be made of the cases, and without going through the trial, as they had in the Santa Clara case, they were submitted by stipulation that all of the testimony taken in the other cases, so far as it was applicable to these cases, should be the testimony in these cases.

A MEMBER: Did the Santa Clara case contain the fence provision? A. Yes, sir; the Santa Clara case contained the fact that fences were included; the findings, and there was some testimony, I understand it. I was not here during the entire time of the trial of the Santa Clara case, but I understand that some testimony was taken to the effect that the fences were included, but what that was I do not know.

MR. LEZINSKY: If there was some testimony to that effect, why is it that the express finding upon that point, which is in typewriting here, is crossed out, in the case you are speaking of, in the case of the People against the Central Pacific, the case that I am asking you about? A. I am not talking about any testimony upon that. I will explain to you. In the Santa Clara case there was some testimony introduced as to whether the fences were included in the assessment.

Q. And admitted? A. Yes, sir. But what that testimony was I would not say. Upon whatever testimony it was, the Court found that the fences were included in that assessment. Before that decision in that case was rendered in the Supreme Court of the United States, these cases, to which you now refer for the taxes of 1883, were tried, and it was not known then the importance of the question of the fences. I think, if I remember correctly, the cases from 1883, in which I appeared as attorney, there was no finding that steamboats or fences were included for that year. Do you find them there in the taxes of 1883?

Q. No, sir; except in a general way. I do find that there was such a finding, but that it was crossed out in red ink? A. Yes, sir.

Q. And on the margin there is "Erased before signing and filing, L. S." I suppose that is Lorenzo Sawyer? A. Yes, sir; which finding I caused to be stricken out, because, notwithstanding it was not known that the fence provision cut any figure in the decision of those cases, that was anterior to the decision of the Supreme Court; but, for fear that there might be some point made on that, I made objection to this finding here, and had it stricken out.

Q. Was it not because the actual fact was to the contrary? A. No, sir; I think the proposition arose in this way: I don't know whether as to the fences or steamers, but there was some question about those facts, and I objected to them, because I said that under the stipulation upon which these cases were submitted, testimony relating to fences and steamboats for this year's assessment, all testimony relating to that was inapplicable to these cases; and that under the stipulation under which these cases were submitted, that testimony was taken in the Santa Clara cases, if it showed that fences were included, was not the evidence in these cases, because not applicable. So I insisted there, as you will find in the case for 1884 where

this record was manipulated, I there insisted again, though I was not the attorney, but merely a friend, to assist the Attorney-General; I had some question in my mind about this fence proposition, and these other things, and I was trying to get everything out of the record that I could; and in the cases for 1883 I objected to the finding that the steamboats were included, not because I did not know that as a matter of fact they had been included, but I was trying to keep everything out of the record that I could.

MR. DIBBLE: Had they been included? A. That question came up; and, to determine that, we agreed, counsel for both sides, that whatever Mr. Maslin, who was then the Secretary of the Board, said about that proposition should be the evidence in the case. He wrote a letter, stating that they were not included, and you will not find it in the findings of 1883.

MR. LEZINSKY: It is in the findings of 1884. A. I am talking about the cases for 1883, as they were the only cases in which I had any connection as attorney of record, or any other way, except as a friend.

Q. Then I will call your attention to this part of the finding: "Said assessment included all property and the kinds of property mentioned in Section 3665 of the Political Code of California, as amended March 9, 1883, except depots, stations, shops, gravel beds, and buildings erected upon the places covered by the right of way, which last mentioned property was assessed, as provided in said section, by local assessors." If that finding is correct, when Section 3665 of the Political Code mentioned steamboats as a part of the property to be assessed, whether or not steamboats were actually assessed, or whether or not the Board of Equalization, upon the statement of Mr. Maslin that steamboats were not assessed in making their assessment, did willfully and designedly exclude steamboats in making that assessment? A. This is a general finding that all of the property mentioned in Section 3665 was assessed, which I suppose the Court, in the absence of any special finding, would find anyway, upon the presumption that the officers had performed their duty. This statute, 3665 of the Code, unfortunately for the State as it now turns out to be, is an unconstitutional and invalid provision.

MR. DIBBLE: They are proposing to reënact it now in the Legislature. A. The Supreme Court of the United States, and I believe they also refer to a State Supreme Court decision, hold that so far as that section attempts to enlarge the space over which the State Board of Equalization might exercise jurisdiction is unconstitutional.

MR. DUNN: The finding is that the State Board assessed all things mentioned in that section. That section mentions steamboats, and you declared or you suggested that steamboats ought not to be included, because you were informed that they were not assessable by the State Board? A. Yes, sir.

Q. And the finding you agreed to declared that the Board did assess them? A. I did not agree to findings. There are no findings here that I agreed to, and I do not suppose any findings that anybody agreed to. These findings, gentlemen, are prepared in this way: the winning party in a suit prepares a draft of findings at the request of the Court. The presumption is that the Court prepares its own findings, but we know that the work is done by the attorney who wins the case. The railroad people having won the case here, prepared a draft of findings for the Court upon the evidence, which, out of courtesy, they submit to the attorneys on the other side, to make any suggestions that they may see fit, and to make their objections to this finding or that, or to propose amendments to their findings, or to make objections to those which they have found; and then those

amendments or proposals are all referred to the Court, and then the matter is entirely in the hands of the Court, and the Court makes the findings, and that ends the matter. There is nothing to agree upon. So, in the Santa Clara case, the findings were prepared in that way, and submitted to Mr. Delmas, and all the other attorneys in the case, and they made such suggestions as they saw fit, and then the matter went to the Circuit Court Judges, and they made their findings, and that became the record of the Court. And so in these cases, when these matters were submitted these various alterations which you find here were made by my objection to these matters which I spoke of.

MR. LEZINSKY: Because the fact was exactly to the contrary? A. I suppose so.

Q. You state that it was agreed that Mr. Maslin's testimony should be taken on that point, and that Mr. Maslin's testimony was exactly to the contrary? A. Yes, sir.

Q. And therefore these matters were stricken out? A. Yes, sir.

A MEMBER: Mr. Maslin's statement was to the effect that fences and steamboats were not assessable? A. I do not remember that his statement referred to fences; I think it related only to steamboats, but whatever he agreed to was to be the finding in that case.

MR. DIBBLE: Without referring to the record, you say that the findings in the Santa Clara cases found that the fences were assessed? A. Yes, sir.

Q. And there were no steamboats in that case? A. No, sir.

MR. LEZINSKY: Here is a further finding in the second Santa Clara case that has not been offered in evidence: a finding that the assessment includes all kinds of property mentioned in Section 3665 of the Political Code. That term "property" includes steamboats, and the testimony offered in that case was to the contrary of that finding, Mr. Maslin's testimony being that steamboats were not included? A. Yes, sir.

Q. Therefore, the finding was contrary to the evidence, was it not? A. Yes, sir.

A MEMBER: If I recollect right, you stated that the reason that finding was stricken out in red ink, I believe, was because you stated to the counsel on the other side that that question was inapplicable to that case; that the question in the Santa Clara case was not applicable to this case in which you struck out that finding? A. Yes, sir; my first object in striking out this testimony was that there was no testimony upon that proposition before the Court, and that the stipulation upon which these matters were submitted made only the testimony in the Santa Clara cases apply as far as it was in its nature applicable; that, so far as testimony relating to the fact of whether or not fences were included in 1880, in the Santa Clara cases of 1881, would have no application to the question of whether fences were included in the assessment of 1883. The other parties contended that the stipulation was broad enough to cover those cases, and there arose the difficulty. I contended that was not the fact, and that it ought not to go into the record. And that is all that the railroad people asked; then we sent to Mr. Maslin and took his statement, without its being under oath, that there were no steamboats included for that year in the assessment. There was no question of fences in that proposition, and then that portion was stricken out, and this general finding here that all property that is mentioned in Section 3665 of the Political Code, I suppose, is supported only upon the presumption of law that the Board of Equalization performed their duties as they were directed in this statute.

MR. LEZINSKY: I hold a stipulation in my hand, and this was a part of it, that at any time before the decision the attorneys may take the state-

ment of the Clerk of the State Board of Equalization upon the question of whether or not the value of the fences are included by the Board, etc., and that being filed, such a statement shall be conclusive upon that issue. You say that the sworn statement was obtained, and that the statement showed that the steamboats were not included in the assessment. A. I do not think that there was any sworn statement, but I think that Mr. Maslin wrote a letter stating that they were not included.

Q. Then the sworn statement was not produced? A. No, sir.

Q. It should have been obtained, but it was not obtained? A. Yes, sir; the party was not under oath.

Q. But still the statement was that they were not included? A. Yes, sir; that is my recollection.

Q. And for that reason the particular finding upon that point was stricken out of the findings prepared by the railroad company? A. Yes, sir.

Q. The railroad company first prepared findings which did have this matter in them? A. Yes, sir; I suppose so, from that.

Q. I refer to the cases for 1883, simply? A. Yes, sir.

Q. But the general finding which included the fact that the steamboats had been actually included in the assessment, was permitted to remain? A. Yes, sir.

Q. So that the testimony, whatever the character of that testimony was, which was produced upon this point, you now testify, was to the contrary of that finding? A. That is my recollection.

MR. HAYMOND: You are just testifying to your recollection? A. That is all, sir.

Q. Now, in relation to the fences, there is in that stipulation, a stipulation that there was additional evidence offered upon that question, both by the plaintiff and by the defendant. My recollection of that is, that you objected to the finding, and it was settled by Judge Sawyer in our favor, that there was testimony which proved in that case that fences were assessed. A. In 1883?

Q. Yes, sir? A. There is no finding about fences in that case at all, I think, but there is as to steamboats. I have never seen these records since then.

Q. This is the case I speak of, and this is the case decided.

MR. LEZINSKY: You had nothing to do with the cases of 1884? A. I have said I had nothing to do with the cases of 1884 as attorney. I will tell you all that I know about these cases.

MR. HAYMOND: There is a stipulation in 1884 that there was additional evidence offered by both parties. Now will you look at the record. You see that there are some pencil marks upon the margin there; will you see if you wrote that line? [No answer.]

A MEMBER: Who had the actual charge of those cases in 1883? A. It is hard to tell who were the attorneys of record, but by the orders made by the Circuit Judge the whole matter was given over to Attorney-General Marshall, and he had absolute control. Of course, I did all I could. When the record of 1883 was concluded a decision of the Supreme Court had not been made, and the importance of this fence and steamboat matter was not so apparent, but I had some idea that there might be something in it, and I tried to keep them out, to make as good a record as I could for the State, and that is how that comes.

MR. HAYMOND: I will ask you to look at the record, in which there are the pencil marks. Take the one for 1884, and I ask you if you know what they mean? A. I had nothing to do with the cases of 1884, except that having been connected with the cases of 1883, and entering pretty largely

into the spirit that was entertained by the Attorney-General so far as that proposition was concerned, of getting all the money we could into the Treasury, and particularly upon the proposition of whether or not the San Bernardino case was a case properly gotten up which the Supreme Court of the United States would hear, I was very much interested in that matter, because we had been attacked in the extra session of the Legislature upon the proposition that there was not a record that the Supreme Court of the United States would hear, and I felt very much interested in the proposition; and being connected with the cases with the Attorney-General, when this matter came up he gave to me a draft of the findings after they had been submitted here upon stipulation. He submitted to me this draft that had been handed to him by the attorneys for the railroad, and asked me to look through it, and see if I could make any suggestions, changes, or alterations. I then went through the draft of findings, and made what appeared to me to be valid objections to the findings. I went through those findings or that draft, and made such objections to them as suggested themselves to my mind. I suppose the general finding was based upon the presumption that the officers had done their duty. No other evidence than Mr. Maslin's testimony was given in the matter. I went through this record in case No. 3669. This draft of findings was submitted to me by the Attorney-General, with the request that I should go through them carefully, and make such memoranda, or suggest such alterations, as to my mind ought to be made. This is the case of 1884, a case against the Central Pacific Railroad Company, that did go to the United States Supreme Court, and here is my memorandum attached to it. I went through the record, and you will find here in my handwriting, opposite certain findings, "No evidence to support this finding." "Objected to; no evidence." That is in another finding. "Objected to; no evidence." And there are several in the same way, and those findings appear here to have been stricken out. The first finding I refer to is No. 22.

MR. HAYMOND: There was some case read here by Mr. Lezinsky that had pencil marks upon them. A. This is the one I speak of, now. Here is Finding No. 22, in which I made a pencil mark opposite here, for the Attorney-General's use, that it should be stricken out: "Objected to on the ground that there is no evidence to support the finding." That is my handwriting.

THE CHAIRMAN: A finding, then, was made against your objection? A. Yes, sir.

Q. What is the finding? A. The finding that I objected to appears to be stricken out altogether. Of course it was not stricken out, but it is a finding; but my objection was made to it on the margin. Then it appears to be stricken out. Who struck it out I don't know; that I know nothing about. Or whether the Court struck it out when it was turned over to the Court, I don't know. This long finding was stricken out; and then some time afterwards, when the matter indirectly came to my attention—and to everybody's attention in the proceeding in the Supreme Court of this State in the suit brought to compel the payment of this money into the Treasury, attention was called to the fact that there was this slip of paper pasted over here, which took the place, apparently, of this finding which had been stricken out. And it appears here that this piece of paper here, right opposite the finding stricken out that was objected to, reads: "The State Board of Equalization, in making the supposed assessment of said roadway of defendant, did knowingly and designedly include in the valuation of said roadway the value of fences erected upon the line between said roadway and the land of coterminous proprietors."

THE CHAIRMAN: How did that get in there? A. I don't know.

Q. That was the language of the finding in that Santa Clara case, wasn't it? A. Yes, sir.

MR. LEZINSKY: Do you know, of your own knowledge, whether or not that statement of Mr. Maslin was not to the contrary of that? A. Mr. Maslin made no statement for that year.

Q. Do you know of any statement made upon that point whatever? A. I had nothing to do with that.

Q. Why did you make that objection then, to that finding? A. Because of that stipulation.

Q. The stipulation did not cover the point? A. That was my view of it. My view was that the stipulation filed in these cases that the testimony was introduced in the Santa Clara cases, so far as applicable, were to be used here; my idea was, that the testimony in the Santa Clara case about fences was not applicable to this case.

A MEMBER: Why? A. Because they were different years.

Q. Was not the stipulation in that case, that testimony should be introduced on both sides, concerning that matter? A. I don't remember how that was.

MR. HAYMOND: You will find that to be correct; but before coming to that, I will ask you, as a lawyer, what is your interpretation of what occurred there; what was done? The findings were prepared by the attorneys for the defendant? A. Yes, sir.

Q. And submitted, and then you take those objections? A. Yes, sir.

Q. Which would naturally be sent to the Court for decision? A. Yes, sir.

Q. Why was it that all of these findings, and statements of facts, were not formally engrossed? A. I do not know. As I stated, there was some understanding between the Attorney-General and the attorneys for the railroad, that there need not be any engrossed statement.

Q. Was not that to save expense to the State? I will refresh your memory. Was it not stated that these findings would be in an awkward shape, and that if the Clerk would make it out from this statement (referring to Judge Sawyer) if any question arose as to what the findings were— A. I don't remember about that. All I know about this case is that I made those objections; and when the matter was called to my attention again in the Supreme Court of this State, they were in this condition; and I saw then that the matters that I had objected to had been stricken out; whether by the Court agreeing that there was no evidence for the balance of this matter, or what was the evidence, I don't know. The matter is in that shape.

MR. HAYMOND: Is that for 1884? A. Yes, sir.

MR. HAYMOND: There is a stipulation there that additional evidence had been introduced by both sides on that question. A. That may be so; I don't know.

Q. Is that correct; is that the fact? Was there a stipulation that there had been received additional evidence which was the basis of that finding?

MR. LEZINSKY: There was a stipulation that testimony should be offered.

MR. HAYMOND: The stipulation is: "This case is submitted by testimony offered by defendant, tending to prove the averments contained in subdivisions 25 and 25A of said answer, and by testimony offered by plaintiff tending to disprove the averments of said paragraphs contained."

MR. LEZINSKY: So far as your connection with these cases was concerned, was there any such testimony offered in 1884? A. I do not know.

MR. LEZINSKY: That is a question that we propose to ask of every attor-

ney. A. I will say to the committee that there might have been testimony—a great deal of it—upon that, or any other point, which I knew nothing about, because I had nothing to do with the case, except to go to the Attorney-General and turn the matter over to him. But as I understood the stipulation I thought that that finding was not supported by the evidence, and I made the objection.

THE CHAIRMAN: Mr. Monckton, who has been very kind in this matter, says he will have to take possession of these papers now, so as to lock them up with the other records.

A MEMBER: I move that we adjourn until Monday, at Sacramento.

ANOTHER MEMBER: Who tried that case in 1884? A. The Attorney-General. I will say one thing that is due to Mr. Marshall, as he is not here. A statement was made about his not taking advantage of the point given him by the stipulation here. If you will look at the dates, and examine the amount of this tax litigation and vast amount of trouble and talk in the newspapers, you will see that this matter came up a short time before he retired from office; and he told me that he had told the incoming Attorney-General of these matters, and offered to give him any assistance that he could in the matter, and I will say that it was as much the duty of the incoming Attorney-General, when he came into office, and in possession of these facts in the record, to press that matter, as it was for Mr. Marshall, the former Attorney-General.

Q. Was Attorney-General Marshall assisted in the trial of these cases in 1884 by anybody? A. No, sir; he tried it upon stipulation.

Q. How long after the stipulation did Mr. Marshall go out of office? A. I don't know the date, but there was time enough for the incoming Attorney-General to have taken advantage of this stipulation the same as Mr. Marshall, and I told Mr. Johnson, so far as these records were concerned, that I would give him my assistance concerning them.

MR. DIBBLE: What is the title of that 1884 case? A. One title is "The People of the State of California vs. the Central Pacific Railroad Company;" another, "The People of the State against the Southern Pacific Company;" another, the case of "The People vs. the Northern Railroad Company;" and another, "The People vs. The San Pablo and Tulare."

MR. STORKE: Did that involve the Federal franchise? A. Yes, sir: I think there was a general finding there that the franchises of the railroad were assessed. It was not supposed then that these people had any franchise from the Government, but in recent decisions the Supreme Court thinks they have got a valuable franchise, and, that being included, the whole assessment was void.

MR. DUNN: You speak about Mr. Marshall going to the present Attorney-General and offering him assistance? A. He informed me so; yes, sir.

Q. You probably recall the circumstances of that meeting in June, 1886, that I wrote a letter after I came down here and examined these records in the Clerk's office of this Court, where I found that the four miles across the bay has been assessed, as the findings declared, and then fences had been assessed, as the findings declared, and that steamboats had been assessed, as the findings declared, and that a day or two afterwards you were interviewed by a reporter of the "Examiner," on July 11, 1886; and, as I recall your answer, it was this: "If those records are not true, of course the Attorney-General can require, and will require of the attorneys for the railroad, that the records be corrected before his term of office expires." A. I do not remember that; I remember giving an interview, and whatever that is—that is a better statement of anything concerning this matter than my statement to-day, because it was made at the time.

Q. You think that that was correct? A. I would prefer to stand by the view that I then expressed, to what I do now, because the matter has gone partly from my mind since then. I think what I stated there in that interview was this: That if this record is not the record; if it has been tampered with; if it is not sufficient, or if it is a record that the Supreme Court of the United States ought not to permit to be among its files; that that matter could be corrected; that if the Attorney-General wanted to take any advantage of this fact he could very easily apply to the Supreme Court of the United States, and have the original record brought up from this Court into that Court, and they could then and there say whether that record was fit to be called a record of the Court. I suggested that to him.

MR. SHANAHAN: I understand that in order to get the evidence properly before this committee on the part of the Controller, or whoever you please, it will be necessary to have these records at hand, to the end that the questions may be properly put. We have made a hard struggle to get them, and we got them late in the afternoon. Our understanding was that we could get them to Sacramento easy enough. Mr. Haymond wrote that, I believe, and I objected to coming down here on that account. We came and ascertained that the record could not leave this Court. I desire to know whether we can get these records, and have them sent to Sacramento; if so, when can it be accomplished?

MR. HAYMOND: Only speaking for myself, I will enter into a stipulation with anybody that these records may be taken to Sacramento, or anywhere else. I do not think the Judge would object to having them withdrawn, if both parties agreed that they might be.

A MEMBER: Is it not a fact that there was such a stipulation, and that we could not get the papers?

MR. HAYMOND: That was because we were not able to find the Judge, I think.

A MEMBER [To Mr. Lezinsky]: One of the cases you referred to here awhile ago contained a finding that was stricken out in red ink?

MR. LEZINSKY: Yes, sir; my recollection is that it was the case of the People vs. the Central Pacific.

A MEMBER: And notwithstanding that finding was stricken out there was a general finding that the property was assessed under Section 3665 of the Political Code? A. Yes, sir.

Q. What I want to know is, did the Supreme Court, in passing upon that case, take that finding, as a finding that the steamboats had been assessed, and decided upon that point in these cases where the special finding was stricken out, and there was a general finding referring to Section 3665 of the Code, whether the Supreme Court in passing upon that case, considered that general finding as a finding that fences and steamboats had been assessed?

MR. LEZINSKY: I do not think they passed upon it at all. But, in connection with that matter, taking that in connection with the findings of the case of 1884, it shows that that finding was stricken out of those findings, because there was no evidence to support it, or because the evidence was contrary. The evidence in the case of 1884 was the same, and the actions of the Board of Equalization were the same, so that that should have been official knowledge of that matter, so that that finding did not go into the findings of 1884.

A MEMBER: This case goes to the Supreme Court of the United States, and the Attorney-General is charged with official carelessness to the detriment of the people. If the general finding was not detrimental to the

people; that is, if the Court did not pass upon the finding that steamboats or fences were assessed; then this Act was not a detriment to the people, in so far as the State never had a decision by the Court.

MR. LEZINSKY: The findings are not in that case, and they did not go up on that point. [To Mr. Baggett]: In either of these cases of 1883 or 1884, were there, to your knowledge, any actual proceedings, or any actual testimony taken in Court? A. My recollection is that there were not.

Q. That there was no testimony actually taken; and no proceedings actually had in the Court-room, in all of the cases of 1883 and 1884? A. In 1884, I tell you I do not know; but in 1883, I had nothing to do with the trial of the cases of 1884, except a draft of the findings was submitted to me, and I made these pencil marks upon them. In 1884 my recollection is that no testimony was taken in the Court-room, and the only testimony taken outside of this stipulation, which referred to the testimony in the Santa Clara case, as far as applicable, was this matter relating to the assessment of steamboats, which was the letter of Mr. Maslin.

Q. And that was to the contrary? A. Yes, sir.

MR. HAYMOND: If you should be shown the record in which Judge Sawyer recites that the testimony was taken, you would change your opinion, would you not? A. I don't know; I would not change my opinion as to what I remembered about it. I am only stating what I remember.

Q. If you will look into this case you will find that Judge Sawyer recites that testimony was taken? A. That may be so; but I have no recollection of it.

Q. That is in 1883, or in 1884? A. 1884; in 1884; it may have been so.

[Here the Commission adjourned, to meet in Sacramento on Monday next.]

SUPREME COURT OF THE UNITED STATES, No. 1063.

THE COUNTY OF SAN MATEO, Plaintiff in Error,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant in Error.

Argument of Roscoe Conkling, of Counsel for Defendant in Error.

MR. CONKLING said: May it please your Honors: From the new and novel Constitution recently devised for California, I will cull such provisions, and only such, as have to do with the case before you. Article *thirteen* embraces the whole ground of controversy.

This article seems to be—the adverse briefs insist that it is, and the Courts of California have adjudged it to be—self-executing; self-executing in dictating to the “State Board of Equalization” the action of which we complain. The article ordains:

First—That all property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law; and that “property” includes all things, real, personal,

and mixed, capable of private ownership, including credits and franchises, except crops, school property, and property of the United States.

Second—That the Legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to *bona fide* residents of the State.

Third—“That a mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby.”

Fourth—That, “except as to railroads and other quasi public corporations,” in case of debts so secured, only, the value of the property affected, “less the value of such security, shall be assessed and taxed to the owner of the property.”

I beg your honors to observe the sweeping effect of these words of exception. They extend to *all taxable property*. They denote all sorts of property, whether real, personal, or mixed. They embrace choses in action, chattels, and shares of stock, as much as lands. Railroad property, that is to say, property used or usable in operating railways, or appurtenant to railways, is not selected. No class of property or species of property is specified. By no possibility can the words be limited to certain kinds of property, or made applicable only to property devoted to particular uses. They include all manner of property, wherever situate, and however used. The only criterion or distinction is *ownership*. Whatever it be, wherever it be, whatever its use, if it be the property of *certain owners*, it is excepted. It is not like a special tax on dogs, or carriages, or mills, or machines, or watches, or railway equipment. It is a provision for special and excessive taxation of all the property of certain taxpayers. The same property possessed by other owners, though used in the same way, escapes the exception.

The argument has been confused by speaking of this invidious exception as if it were leveled only at “railroad property,” to borrow the language of counsel, and as if it were confined to property used for railway purposes.

Losing sight of this vital distinction, seemed to me to make the learned and able argument with which the case began evade the point, and fall short of the requirement.

Article thirteen continues:

Fifth—That all property shall be assessed in the manner prescribed by law in the county and at the place in the county where it is, except the franchise, roadway, roadbed, rails, and rolling stock of railroads *operated in more than one county*; and that these shall be assessed by the State Board of Equalization at their “actual value,” and apportioned to the counties, townships, etc., according to the number of miles therein.

Sixth—The State Board of Equalization consists of a member elected from each Congressional District, and the State Controller, and its function is to equalize the assessment rolls of counties as between counties; it has no power to equalize individual assessments. This has been decided by the Courts of California, and is obvious on the face of the Constitution.

Seventh—The Supervisors of each county constitute the Board of Equalization of individual assessments. Under the first clause above recited, which ordains that the value of property in general shall “be ascertained as provided by law,” the Legislature has by statute provided for days and places certain for hearing, for full notice, and for opportunity to be heard, for all save “railroad and other quasi public corporations,” and has made the valuation and quantity of all property debatable and contestable, save only the property of “railroads operated in more than one county.” I wish here again to emphasize the word “property,” and again to beg the Court to observe that this exception in the statute is not of “railroad property,”

whatever that may be, alone, but it is of all, and all manner of property whatsoever, owned by these corporations.

ATTORNEY-GENERAL HART: What exception do you refer to there?

MR. CONKLING: The statute has made the valuation and quantity of all property debatable and contestable by the taxpayer, save only the property of railroads operated in more than one county. The point is that this invidious exclusion is not merely of the roadbed, rolling stock, or the railroad, or of property used to operate the railroad, but it extends to all property whatsoever, wherever it may be, however it may be used, if it be owned by a company operating a railroad in more than one county.

The Legislature, as if the Constitution was not sufficiently blunt, enacted that "the valuation fixed by them (that is, the State Board,) shall be final and conclusive."

Eighth—No day is fixed on which the State Board shall make the assessment. The Constitution is silent in this regard, and a statute declares only that it shall be "*on or before* the first Monday in May." The same statute declares that an officer of any corporation operating a railroad in more than one county shall, on or before the first Monday in April, furnish the Board a sworn statement of the number of miles of road and their value, a detailed statement of all property (without value), number and value of engines and cars in the State or "on railways which are parts of lines extending beyond the limits of the State," amount of rolling stock, gross earnings of the entire railway, and proportionate earnings in the State, and all the property designated in the section of the statute, and such other facts as the Board may require.

What is to be done with this statement, or what part it is to play, is left to conjecture. The reasonable conjecture is indicated by the history of these provisions, and the excitement which gave rise to them, namely: that the list is an inquisitorial contrivance to aid in gathering the information which may be used in visiting with exceptional exactions the taxpayers to be put under a ban.

My learned adversary referred to this paper as a legal and final basis for taxation and assessment. I may refer to it again. I pause now to say that it is a mere bill of discovery—a visitatorial device to save the members of the State Board the steps and pains which might otherwise be necessary to spy out all the remote, disconnected, intangible items of property whereon to put the brand of unequal assessment and unjust taxation.

Ninth—No time, place, mode, or possibility of being heard, is provided for those thus handed over to the State Board. The same statute which makes the Board's assessment final, directs that "*on or before*" the fifteenth of May it shall be sent to the County Assessor of each county through which the road runs, and he and the Supervisors are to take it as they get it; and now I quote the words, "it shall constitute the taxable value of said property for taxable purposes."

Tenth—Under these provisions and this machinery, the State Board, by a letter addressed to the Assessor of San Mateo County, decreed that the defendant should be taxed on a valuation of \$11,739,915, that is to say, \$16,500 per mile of road. The road was mortgaged for upwards of \$3,000 a mile. No deduction of the mortgage was made, and the property, as the answer alleges, and as the demurrer admits, was rated at twice its actual value, saying nothing of incumbrances.

The denial of deduction of the mortgage, of itself produced an excess of \$2,133,000 in the valuation.

Eleventh—The assessment thus declared, included the whole franchise of the defendant, as well its right to be, and to do business, derived from

the United States, as that alleged to be derived from the State of California. The assessment covered as well its right to be, and to act as an instrumentality and agency of the General Government, as its right to conduct private business. These elements are all blended in one whole, indivisible, single assessment.

I did not, perhaps, apprehend a remark which fell from the learned counsel on the other side, questioning the presence of this element of the case; but, whatever may have been his meaning, I meet him with page 29 of the record, which shows that the answer alleges—of course the demurrer admits—that part and parcel, indivisible and blended with all the other parts of this assessment, was the value of the franchise, the whole franchise, every faculty, every increment and right possessed by the defendant as a creature, or an instrumentality, or agency, or means, created or adopted by the General Government for governmental purposes.

The questions presented to your honors are—

First—Do these provisions and proceedings deprive the defendant and its shareholders of property “without due process of law,” and do they “deny to any person the equal protection of the laws?”

Second—May a State tax not only the tangible property of a Federal agent, but the agency itself, its faculties, trade, and occupation, and its right to be and to act?

Confining myself to the limits of time within which I mean to keep, I shall pass very briefly over some of the points discussed in my brief, and, in so doing, my learned brother must not think that I intend to fall short of a full opening of our argument.

This action must stand, if it can stand at all, on the revenue powers of the State. There seems, in the Court below, to have been an argument, perhaps only a suggestion, that it might be shifted to some other ground, and that the scheme of taxation formulated in the provisions just recited might find shelter and support in the right of the State to repeal, alter, or amend a grant or charter to a corporation. To such a theory there are several answers.

The action is for taxes, and for nothing else. It is founded on a statute specifically enabling a county to sue for delinquent county and State taxes levied on the same property. (Statutes of California, 1880, p. 136.) The declaration follows the statute and concludes with this demand, “wherefore the plaintiff prays judgment for said several sums, with interest and penalty as aforesaid, and costs of suit.” (Record, p. 2.) Yet, in the presence of this demand, my learned friend, in the stress of his argument, feels driven to maintain that this is not a personal action asking judgment *in personam*, but only an action praying that some lien *in rem* may be established.

It is a personal action, an action *in personam*, praying a personal judgment, in money, with interest and penalty—and an action for taxes, and nothing else.

The Constitution of California is divided into articles, and the articles into sections. Article XV, in twenty-four sections, deals with “*corporations*,” not with taxation. It contains nothing imposing any condition in aid of this action, nothing touching its subject. Article XII, with its several sections, treats of “*revenue and taxation*,” and of nothing else. It imposes no condition on the continuance of railroad or other corporations.

Corporations in California exist only under general laws. Special charters are forbidden by the new Constitution—so they were by the old Constitution. The right reserved to repeal and alter, relates to and is confined to the general laws which permit individuals to incorporate themselves.

It is not a power to single out one, or some, or any corporation, and alter its charter, or impose conditions on it; but only a power reserved to change the general law under which voluntary aggregations or associations, called corporations, are formed.

These are the words: "Corporations may be formed under general laws but shall not be created by special Act. All laws now in force in this State concerning corporations, and all laws that may hereafter be passed pursuant to this section, may be altered from time to time, or repealed." The language of the old Constitution, as far as it would touch this case, was in effect the same.

Between such a reservation, and the reservation originally suggested by Mr. Justice Story as a mode of avoiding, in the case of a special grant, the clause in the Constitution of the United States making the contracts of States inviolate, there is a plain difference, at least in the manner in which the power of alteration or amendment may and must be exerted.

The only existence the defendant ever derived from California was under a general law; and the power to alter, she has chosen to reserve, must be exerted by a general law changing the general law, and applicable alike to all the creatures which exist by reason of it.

That this distinction has not escaped your honors, may be gathered from *Miller vs. The State*, 15 Wallace, 478 and 499; and *Holyoke Co. vs. Lyman*, same volume, 500.

It is torture to twist the provisions for taxation, and the proceedings here complained of, into resemblance of an alteration of the statute of incorporation.

But suppose it were otherwise. Suppose the defendant held its franchise solely by special grant from California, and the grant reserved the right to alter or repeal.

Suppose further, that by express and apt words, California had attempted in any way, for any purpose, in the name of taxation, or in any other name, to take, or, which is the same thing, to *burden* the property of the defendant *apart from its franchise*—its tangible property, however lawfully acquired. (The mode in which its vested rights were lawfully acquired, be it by gift or gain, is wholly immaterial. 43 Michigan, 147, Cooley, J., and cases cited.) The act of the State in attempting by unequal taxation, or in any other mode, to wrest from the defendant its property beyond its franchise, or to burden or despoil it, would be mere confiscation. The right to alter the charter, or revoke the franchise, would give no warrant to such spoliation.

Railroad Co. vs. Maine, 6 Otto, 499, vid., 511.

Sinking Fund Cases, 9 Otto, 701, vid., 720.

Tomlinson vs. Jessup, 15 Wallace, 454, vid., 458.

Commonwealth vs. Essex Co., 13 Gray, 239, vid., 253.

In re Parrot, 6 Sawyer, 358.

Such appropriation of property, even under sanction of the Constitution of a State, is forbidden now by the Constitution of the United States.

It seems to have been argued in the Circuit Court, it has been hinted here, that the continued existence of the defendant has, in some way, operated as consent to be despoiled at the pleasure of the State, or of some ephemeral majority wielding for a time the scepter of the State. In answer it might be said, if the case required it, which it does not, that if such consent were written in the defendant's charter, the law would not tolerate such a violation of inherent right.

Insurance Company vs. Morse, 20 Wallace, 445.

It might also be said that the defendant by not dying or dissolving

when the new Constitution came in, did not consent, even if consent would be effectual, to any wrongs which the Constitution threatened. Surely the act of being and continuing to be did not work a waiver or forfeiture of the right to claim the protection of the laws. It would be odd indeed if a citizen could buy the enjoyment of the fundamental rights a Constitution professes to secure to all, only by giving up, or being held to have given up, some of those very rights.

Leaving so far-fetched invention, I come to another which seems hardly less alien to this argument.

The learned counsel advanced it with some gravity. He shuddered at the consequences of your pronouncing the law. He told us that to annul the invidious exception aimed at certain taxpayers would prostrate California's tax system. He foretold paralysis, as if to uphold the equality of all before the law would "shut the gates of mercy on mankind."

I deny all this, and were I sure my learned brother would see no offense in it, I would say the fear is as empty as idle thunder from a "painted Jove."

Were the words "except as to railroads and other quasi public corporations" annulled or blotted out, property owned by corporations or aggregations would fall under the rule applied to like property, and to all property irrespective of its ownership; and then these taxpayers would be assessed and taxed as other taxpayers are.

His honor, Mr. Justice Field, suggests in the judgment, remarkable for its learning and ability, which he pronounced in this case at the circuit, that a new assessment might be necessary. That may be. If so, a new assessment is the extent of inconvenience—no more.

If the other invidious provision, giving to the State Board a star-chamber jurisdiction, falls, the remainder of the Constitution will still speak. These quasi public corporations will be assessed and heard by the same State authorities who deal with all other corporations and other holders of taxable property. And then, if the authorities confine their assessments to the property which the law makes taxable by the State, and do not reach out hungry for jurisdiction over not only the tangible property, but the faculties of national instrumentalities, nobody will complain.

Moreover, may it please your honors, for a State Legislature to propose and the people of the State to ratify an amendment of the State's Constitution, even if that were needful, is not in our system so serious or so hurtful as to trample on common, elemental, and vested rights, or to enthrone chaos or communism. The people of all the States in Congress assembled, and the people of the States themselves, went to the trouble of so amending the National Constitution as to forbid, and as far as they could to prevent, the very thing which boisterous agitation drove California to do. Perhaps it is well that so early, so great and conspicuous a State—a State which had part, my associate tells me, in ratifying the fourteenth amendment, and embedding it in the bulwarks of the Constitution—that such a State has, in a way so marked, illustrated the wisdom, the need, and the safety of a solemn act which embodied the judgment, the conscience, and the will, not only it seems of California, but of three quarters of all the States. It will do good, not harm, to California to purge her Constitution of blemishes which civilized jurisprudence has condemned for centuries—of dangerous forces, more at war with the interests of this than of any former age. From Runnymede to Appomattox, the jewel for which civilized man has fought has been the law of the land and equality before the law. To remove from the escutcheon of California such a bar-sinister as has been placed there,

will not be an injury or a humiliation, as the learned counsel suggests, but rather a glory; the act will burnish, not tarnish.

I come now to say that the Southern Pacific Railroad Company and its creditors and stockholders, are among the "persons" protected by the fourteenth amendment of the Constitution of the United States.

The effect of the amendment, in its requirements of "due process of law," was to subject the States to the restriction which the fifth amendment had, for then seventy-eight years, imposed on the General Government. I have cited, to remind your honors of them, two of the cases in which this tribunal has solemnly so said:

Davidson vs. New Orleans, 96 U. S., 97.

Kelly vs. Pittsburgh, 104 U. S., 78.

In view of this identity of adjudged and historic language, it would seem too late to question the scope of the word "persons," that word having been held, by long construction and consent, to include artificial persons—that word, as it stands in the fifth amendment, having been decided again and again, and never the contrary, to include corporations as well as natural persons. It would seem also beyond dispute, that no State, under the fourteenth amendment, can take or burden property by means which, were Congress to employ them in the District of Columbia, would violate the fifth amendment.

And here I pause a moment.

The fifth amendment speaking to Congress and operating without let or hindrance, at least in that District, once ten miles square, in which your honors sit, which is by the Constitution committed to the absolute government, within constitutional limits, of Congress—I mean absolute, as distinct from concurrent with any other sovereignty—within that District, whatever the fifth amendment would prohibit Congress from doing in dispensing with due process of law, assuredly the same words in the fourteenth amendment, speaking to the States, prohibit the States from doing, in dispensing with due process of law. But to make the fifth amendment complete in illustration of the case at bar, we have need to add to it the words, imported first into the Constitution in the fourteenth amendment, "nor deny to any person within its jurisdiction the equal protection of the laws." Add these words to the fifth amendment. They do not make one hair white or black as to the *persons* on whom the amendment operates. They leave it exactly as it stands as to its scope and meaning, save only in addition to requiring "due process of law," they contain the prohibition, "nor deny to any person the equal protection of the laws." Put these words in the fifth amendment, and consider the right of Congress to enact that, in the District of Columbia, on the same species and value of property, in the same locality, devoted to the same use, clothed with the same attributes, full of the same identity, one man or one corporation shall be assessed twice as much as another; that one man may go before a tribunal in which he, like the Athenian, may say, "Strike, but hear me," and another man shall be turned over to a tribunal which sits in his absence, a tribunal before which, in law and in fact, he has no opportunity, none whatever, to be heard, or even to know the judgment which awaits him, or ever to appeal from it or contest it. Could such an Act of Congress endure the gaze of this Court? Would such an Act seem less evil to the eye of the law, if it fastened its fangs upon persons, or upon certain persons, *associated or incorporated under a general law*.

The idea prevails—it is found in the opinion of the Court in the Slaughter-house Cases; it seems to have been in the mind of the Court in Insurance Co. vs. New Orleans (1 Woods, 85); it has found broad lodg-

ment in the public understanding; that the fourteenth amendment—nay, I might say, all three of the latter amendments, the thirteenth, fourteenth, and fifteenth, were conceived in a single common purpose—that they came out of one and the same crucible, and were struck by the same die; that they gave expression to only one single inspiration. The impression seems to be that the fourteenth amendment especially, was brought forth in the form in which it was at last ratified by the States, as one entire whole, beginning and ending as to the first section at least, with protection to the freedmen of the South.

Mr. Justice Miller, in 16 Wallace, p. 67, speaks of “a unity of purpose” in all three amendments. Again, he speaks, p. 70, referring to the fourteenth amendment, of “the proposition” (in the singular) “submitted to amend the Constitution,” as by the fourteenth amendment. Again, he says, p. 72, it is impossible intelligently to construe “any section or phrase of these amendments” without recurring to the one original always continuing purpose “which we have said was the pervading spirit of them all, the evil which they were designed to remedy.”

It may shed some modifying light on this supposition, to trace from their beginnings the different elements, the different substantive proposals, strangers to each other, independent of each other, originating in different minds, and at different times, not in the order in which they now stand, which finally, by what might be called the attrition of parliamentary processes in the committee and in Congress, came to be collected in one formulated proposal of amendment—put together in sections for convenience and simplicity of submission to the States.

These originally separate, independent propositions, came from a joint committee of the two Houses, a committee most of whose members are dead. Of those who composed it on the part of the Senate, not one is living, save only Mr. Williams, of Oregon. Of those who composed it on the part of the House, I believe a majority are gone. The committee sat with closed doors, the injunction of secrecy being often removed as conclusions were reached. A journal of its proceedings was kept by an experienced recorder from day to day.

It seems odd that such a journal has never been printed by order of either House. It has never been printed, however, or publicly referred to before, I believe.

Having consulted some of those whose opinions it preserves, and having the record in my possession, subject to the inspection of our adversaries, I venture to produce some extracts from it, omitting names in connection with votes.

From these skeleton entries—a journal is only a skeleton—your honors will perceive that different parts of what now stands as a whole—even parts of the clauses supposed to relate exclusively or especially to freedmen and their rights—were separately and independently conceived, separately acted on, perfected, and reported, not in the order in which they are now collated, and not with a single inspiration or design. You will perceive also that before what now constitutes part of the first section was perfected, or even considered, the committee had reported, and lost all jurisdiction and power over, the portion of the amendment which did in truth chiefly relate to the freedmen of the South. The subject of suffrage, the ballot, and representation in Congress, was disposed of before the committee reached the language on which to-day’s argument proceeds.

I begin the argument with the entry of the ninth of January, 1866, the first meeting of the committee at which any proposed amendment of the Constitution was submitted:

“Mr. Stevens submitted a joint resolution, upon which he asked immediate action by the committee, proposing to submit for ratification to the several States the following amendment to the Constitution of the United States:

“Representatives shall be apportioned among the several States which may be included within this Union according to the number of their respective legal voters; and for this purpose none shall be considered as legal voters who are not either natural-born or naturalized citizens of the United States of the age of twenty-one years. Congress shall provide for ascertaining the number of said voters. A true census of the legal voters shall be taken at the same time with the regular census.”

On the same day the Chairman of the committee, that is to say, William Pitt Fessenden, of Maine, offered, apart from the resolution of Mr. Stevens, the following:

“*Resolved*, That in the opinion of this committee the insurgent States cannot with safety to the rights of the people of the United States be allowed to participate in the government, until the basis of representation shall have been modified, and the rights of all persons amply secured, either by new provisions or the necessary changes of existing provisions in the Constitution of the United States, or otherwise.”

I will not stop to ask your honors, most of whom knew Mr. Fessenden, why, if the end to which his mind was reaching out was simply to bespeak protection for the black man of the South, he should choose these general, sweeping, if not inapt words, when he could so easily, plainly, and briefly have expressed exactly the idea on which his thoughts were bent.

“FRIDAY, January 12, 1866.

“Mr. Stevens’ resolution being under consideration, Mr. Conkling gave notice of the following substitute:

“Representatives and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers, counting the whole number of citizens of the United States; *provided*, that whenever in any State civil or political rights or privileges shall be denied or abridged on account of race or color, all persons of such race or color shall be excluded from the basis of representation or taxation.

“Mr. Bingham submitted the following proposed amendment of the Constitution of the United States, and moved that the same be referred to the sub-committee just authorized.”

Not as an amendment to any other proposition, I beg to observe, but as a thing substantive, separate, independent, by itself constituting an amendment, a whole, separate amendment, to be proposed to the Constitution—

“The Congress shall have power to make all laws necessary and proper to secure to all persons in every State within this Union equal protection in their rights of life, liberty, and property.”

The motion was agreed to; that is, the motion to refer to the sub-committee.

“SATURDAY, January 20, 1866.

“The Chairman from the sub-committee on the basis of representation, reported that the sub-committee had directed him to report the following for the action of the joint committee; the first two as alternative propositions, one of which, with the third proposition, to be recommended to Congress for adoption:

“*Resolved*, by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring,

That the following *articles* be proposed to the Legislatures of the several States as *amendments* to the Constitution of the United States, which, when *they, or either of them*, shall be ratified by three fourths of the said Legislatures, shall be valid as part of said Constitution, viz.:

It may not be amiss to remind your honors that the alternative disconnecting words "when they, or either of them, shall be ratified," etc., were copied from the language in which our fathers submitted to the States the ten several, distinct amendments to the Constitution, in 1789.

"ARTICLE —. Representatives and direct taxes shall be apportioned among the several States within this Union according to the respective numbers of citizens of the United States in each State; and all provisions in the Constitution or laws of any State, whereby any distinction is made in political or civil rights or privileges, on account of race, creed, or color, shall be inoperative and void."

Alternative article:

"ARTICLE —. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, counting the whole number of citizens of the United States in each State; *provided*, that whenever the elective franchise shall be denied or abridged in any State on account of race, creed, or color, all persons of such race, creed, or color shall be excluded from the basis of representation."

Now comes the independent article:

"ARTICLE —. Congress shall have power to make all laws necessary and proper to secure to all citizens of the United States, in every State, the same political rights and privileges; and to all citizens in every State"—

I beg your honors to remark that the term here employed was "all citizens in every State"—

—"equal protection in the enjoyment of life, liberty, and property."

"The joint committee proceeded to consider the report of the sub-committee.

"Mr. Stevens moved that the last article be separated from whichever of the other two should be adopted by the committee, and be considered by itself.

"The question was taken by yeas and nays, and decided in the affirmative; yeas, 10; nays, 4; absent and not voting, 1.

"The second proposed alternative"—

That is, visiting the loss of representation on the States as a penalty of denying suffrage to the black man—

"was by vote of the committee considered first."

"Mr. Stevens moved to amend the proposed article by adding the following:

"And whenever the words '*citizens of the United States*' are used in the Constitution of the United States, they shall be construed to mean all persons born in the United States or naturalized, except Indians.

"Pending the consideration of which, Mr. Conkling moved to amend the proposed article by striking out the words '*citizens of the United States in each State*,' and inserting in lieu thereof the words '*persons in each State, excluding Indians not taxed*.'

"The question was taken by yeas and nays, and it was decided in the affirmative—yeas, 11; nays, 3; absent and not voting, 1.

"So the amendment was adopted."

Mr. Stevens withdrew his amendment.

"The question was upon agreeing to the proposed article as amended"—which I need not again read.

"The question was taken by yeas and nays, and it was decided in the affirmative—yeas, 13; nays, 1; absent and not voting, 1.

"So the proposed article, as amended, was agreed to."

On motion of Mr. Bingham—

"*Ordered*, That the Chairman of the Senate portion of the joint committee (Mr. Fessenden) and the Chairman of the House portion of the joint committee (Mr. Stevens) be instructed to report as early as practicable to their respective houses the *proposed amendment to the Constitution of the United States this day agreed upon by the joint committee, and recommend its adoption by the same.*"

I remind your honors that when this resolution had been adopted, the joint committee, it being a special committee, had not only acquitted itself of the whole matter of the proposed amendment, to wit, the right of suffrage of the freedmen of the South connected with representation, but *quoad* that subject the committee was *functus officio*. A special committee falls when it reports the subject committed to it, as an insect dies when it stings.

A special committee does not survive its report: it does not revive again unless "the House" recommits the report, or refers a new subject to the committee. Such is the parliamentary law.

After the report was made, the committee continued only in respect of other matters with which it was charged.

"WEDNESDAY, January 24, 1866.

"The committee proceeded to the consideration of the following amendment to the Constitution proposed by the sub-committee, on the basis of representation:

"Congress shall have power to make all laws necessary and proper to secure to all citizens of the United States in each State the same political rights and privileges, and to all persons in every State equal protection in the enjoyment of life, liberty, and property." ◊

Motions to amend were made, which I pass over.

"Mr. Blow moved to refer the proposed amendment to a select committee of three, to be appointed by the Chairman, with instructions to carefully revise the same."

And it was so referred.

It is worth while to observe that the committee to which it was referred was not the sub-committee which had considered the other amendment to the Constitution, but a new and different sub-committee.

The CHIEF JUSTICE: It was a sub-committee of the joint committee?

Mr. CONKLING: Yes, sir; a sub-committee of the joint committee.

"On motion of Mr. Stevens:

"*Ordered*, That the injunction of secrecy be removed so far as to allow any member of the committee to announce, in his place in Congress, the substance and nature of the *proposed amendment to the Constitution of the United States, under consideration by the committee this morning.*"

That is the amendment I have just read.

"SATURDAY, January 27, 1866.

"The committee met pursuant to the call of its Chairman.

"Mr. Bingham, from the sub-committee on the Powers of Congress, reported back the proposed amendment of the Constitution referred to them, in the following form:

"Congress shall have power to make all laws which shall be necessary

and proper to secure *to all persons in every State* full protection in the enjoyment of *life, liberty, and property*; and to all citizens of the United States in any State the same immunities and also equal political rights and privileges.

“The Chairman moved to strike out the word ‘also’ in the last clause.

“The motion was agreed to.

“Mr. Johnson moved to amend the last clause by striking out the word ‘any’ and inserting ‘every,’ before the word ‘State.’

“The motion was agreed to.

“Mr. Johnson moved to strike out the word ‘all,’ before the word ‘laws.’

“The motion was agreed to.

“Mr. Johnson moved to strike out the last clause of the proposed amendment.

“The question was taken by yeas and nays, and it was decided in the negative—yeas, 4; nays, 6; absent and not voting, 5.

“So the amendment was not agreed to.

“Mr. Stevens moved that the Chairman be instructed to report the joint resolution, as amended, to the Senate, and recommend its adoption by Congress.

“The question was taken by yeas and nays, and it was decided in the negative—yeas, 5; nays, 5; absent and not voting, 5.

“So the motion was not agreed to.”

As will be seen, the vote was a tie. The committee was composed of fifteen members. Five of the members voted for it, five members voted against it, and five members were absent—a fact of some significance, when we remember that the preceding amendment commanded a decided majority of the same committee.

“WEDNESDAY, January 31, 1866.

“The committee met pursuant to the call of its Chairman.”

The amendment proposed by Mr. Bingham was the unfinished business, but there came back on this morning from the House of Representatives the previous amendment which had been reported to that House and to the Senate, touching suffrage and the basis of representation, recommitted to the committee with all cognate proposals, with all the amendments that the wit of man had suggested in the House. This recommittal reinstated the joint committee in relation to that subject, “revived” it, in parliamentary language, and immediately the returned proposition, to the exclusion of the pending proposition, was taken up and proceeded with. Here is the record:

“Mr. Stevens laid before the committee the joint resolution heretofore reported by the committee proposing an amendment to the Constitution of the United States in relation to the basis of representation, which, together with all propositions upon the same subject offered by members of the House, was, by order of the House, again referred to this committee without instructions.

“The committee proceeded to consider the joint resolution.

“After discussion—

“Mr. Stevens moved to amend the same by striking out the words ‘and direct taxes.’

“The motion was agreed to by yeas and nays, as follows: Yeas, 12; nays, 2; absent and not voting, 1.

“Mr. Johnson moved to amend the proviso so that it should read”—

Here is a curious bit of history—

“*Provided*, that whenever the elective franchise shall be denied or

abridged in any State on account of race or color in the election of members of the most numerous branch of the State Legislature, or in the election of the electors for President or Vice-President of the United States, or members of Congress, all persons therein of such race or color shall be excluded from the basis of representation."

The purpose was that the freedmen might be excluded as voters in all county, municipal, and other local elections; but unless they were also excluded from elections for members of the State Legislature, elections of members of Congress, or Presidential electors, the State should for that reason lose no representation.

That motion was lost. Then Mr. Johnson moved the following:

"*Resolved*, That the proposed amendment to the Constitution of the United States in relation to the bases of representation should be so modified as to include among the grounds of disqualification therein referred to in relation to the elective franchise one in regard to former conditions of slavery.

"The question was taken by yeas and nays, and it was decided in the negative—yeas, 6; nays, 7; absent and not voting, 2. So the resolution was not agreed to. Mr. Stevens moved that the joint resolution as modified be reported back to the House of Representatives with a recommendation that the same do pass. The question was taken by yeas and nays, and it was decided in the affirmative—yeas, 10; nays, 4; absent and not voting, 1."

So it went back just as it was reported at first, except that the committee had stricken out the words "and direct taxes." So, the States were to be partially denied representation as a penalty of abridging the suffrage, and the existing rule as to direct taxes was left untouched.

"SATURDAY, February 3, 1886.

"The committee met pursuant to call of its Chairman.

"The committee resumed the consideration of the proposed amendment of the Constitution of the United States, reported from the sub-committee *on powers of Congress*, the same having been amended when last under consideration by this committee (January 27, 1866,) to read as follows:

"Congress shall have power to make laws which shall be necessary and proper to secure to all persons in every State full protection in the enjoyment of life, liberty, and property, and to citizens of the United States in every State the same immunities and equal political rights and privileges.

"Mr. Bingham"—

I beg your honors to give attention to what now follows, because it seems to me quite significant—

"—moved the following as a substitute, by way of amendment:

"The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all privileges and immunities of citizens in the States (Art. 4, Sec 2,) and to all persons in the several States, equal protection in the rights of life, liberty, and property. (Fifth amendment.)"

"After discussion:

"The question was taken by yeas and nays, and it was determined in the affirmative—yeas, 7; nays, 6; absent and not voting, 2. So the amendment was agreed to. The question was upon agreeing to the proposed amendment of the Constitution as amended.

"The question was taken by yeas and nays, and it was determined in the affirmative—yeas, 9; nays, 4; absent and not voting, 2."

The next day, on the motion of Mr. Stevens, this proposition, as a separate and entire amendment of the Constitution—the other amendment having

gone, not only from the committee, but beyond its recall, and being pending in the two Houses—this substantive and complete proposition was reported by the committee to the two Houses.

Now, may it please your honors, obviously the object of the draughtsman of this last referred to amendment in making reference on the face of his resolution to Article 4, Section 2, and to the fifth amendment of the Constitution, was to remind the committee of the established meaning, and universally accepted import and force, of the words which there stood. May I not affirm if this record shows that the committee understood what was meant, that long afterwards, and after the land had been filled with discussion—"the American people," in the language of Mr. Justice Bradley, "in giving their *imprimatur* understood what they were doing, and meant to decree what has, in fact, been decreed." (1 Abbott, 397.)

The committee took a week to consider this amendment, thus identified on its face with Article IV, Section 2, and with the fifth amendment, and on the tenth of February, by a vote of nine to five, ordered it reported to the two Houses.

At the time the fourteenth amendment was ratified, as the records of the two Houses will show, individuals and joint stock companies were appealing for congressional and administrative protection against invidious and discriminating State and local taxes. One instance was that of an express company, whose stock was owned largely by citizens of the State of New York, who came with petitions and bills seeking Acts of Congress to aid them in resisting what they deemed oppressive taxation in two States, and oppressive and ruinous rules of damages applied under State laws. That complaints of oppression in respect of property and other rights, made by citizens of northern States who took up residence in the South, were rife, in and out of Congress, none of us can forget; that complaints of oppression, in various forms, of white men in the South—of "Union men"—were heard on every side, I need not remind the Court.

The war and its results, the condition of the freedmen and the manifest duty owed to them, no doubt, brought on the occasion for constitutional amendment; but when the occasion came, and men set themselves to the task, the accumulated evils falling within the purview of the work were the surrounding circumstances, in the light of which they strove to increase and strengthen the safeguards of the Constitution and the laws.

The rights and wrongs of the freedmen were the chief spur and incentive of the occasion. It may be true, as Mr. Justice Miller has observed, that but for these considerations this amendment never would have been suggested. What then? A particular grievance, some startling illustration of a grievance, is commonly the spur of agitation and of popular or legislative action—sometimes of revolution. The slaying of his daughter by a Roman father marked an era in Rome's history, and was the spur to radical changes in Rome's jurisprudence. Swine breaking through a fence is said to have brought on a war. Laying a tax by way of a paltry stamp on paper sundered the relations of the Colonies and Great Britain. But what then? Did the logic of events, did the changes in jurisprudence, did the spirit of the age, did the principles established, did mutations wrought in relations, did the remedies, and redress, and general laws secured confine themselves to the little cause, the particular instance, incident, provocation, or failure of justice, from which the agitation, the movement, the amendment, or the reformation came? It would be hard indeed to explain the second civil rights bill which did pass, and the unnumbered bills of kindred character which were brought forward and did not pass, if the fourteenth amendment had for its alpha and omega the protection of the

dark browed man of the South. I do not forget that the civil rights bill takes the white man and his privileges as the standard by which to measure the rights of all concerned, declaring that others should have the rights of the white man, such rights being deemed the acme of privilege, immunity, and protection. The men who wrought out the fourteenth amendment were only breaking the way, not for future ages, but for more intrepid legislators; for aftercomers who should march further and with more fearless stride, because supported by a more advanced sentiment gendered by more revealed necessity. The authors of the fourteenth amendment shrank from the idea of taking from the States the power of ascertaining, each State for itself, its own elective body; they paused and covered before the finality of taking from a State the power to say who should and who should not wield the elective franchise. I say they shrank from such radical amendment. They quailed before the credulity of unbelief—one of the most paralyzing and stupefying of the world's forces. Those who had never seen done what afterwards was done in the Southern States, because they had not seen it, did not believe, and would not believe it. They were credulous of their unbelief, and had the fourteenth amendment, or any amendment at that time undertaken, by direct Federal force, to define, determine, and fix in each State, for the State and despite the State, the right to vote, the concurrence of public judgment, that is to say, the approval of a majority, which, in a republic, is the force without which no party, or administration, or congressional policy, or organic amendment can succeed, would have been wanting, and failure would have frustrated the whole project.

The historic narrative in the famous Slaughter-house Cases, omits a great fact, and an ardent sentiment which helped to usher in the fourteenth amendment. As I have said, no doubt regard for the rights of the freedman was uppermost in public thought. "Uncle Tom's Cabin" had long been wept over; four million fetters had fallen; and slaves had given a majestic exhibition of temperance and moderation by abstaining from violence and vengeance when the homes of their masters were left unguarded by owners who had gone to the camp and to the field. Black men, on unnumbered fields of battle, had proved that "before man made them citizens, great Nature made them men." All this is true. It is also true that the term "carpet-bagger" had been coined, and a thousand pens had already begun to write "The Fool's Errand." Men who went first to the South carrying knapsacks, when the struggle ended had gone again to engage in the rivalries of peace. From half of the hamlets in the North, the restless foot of adventure had gone out to the South, and everywhere had met with resentment and suspicion, often with overt hostility. Objections to the presence of new comers from the North had been formulated in the creed of a political party, and had received bloody baptism in leagues, and lodges, and klans. This was known not only to the kinsfolk and neighbors of the vicinage, but to the Representatives and Senators in Congress. In Lord George Gordon's Case the Court held the cry of the mob admissible in evidence as part of the *res gestæ*; and the battle cry of a party against those denounced as "carpet-baggers" and intruders—a cry with which the land resounded—was, and is, part of the *res gestæ* of the fourteenth amendment. Hostility to the privileges and immunities of white men, and to their rights of person, property, and abode, was part of the "very age and body of time."

The elective franchise, citizenship, and the privileges and immunities of citizens, were all undoubtedly associated with the emancipated race,

and the two former with that race exclusively. This cannot be said of any other subject-matter of the fourteenth amendment.

At page 72 of the 16 Wallace, Mr. Justice Miller says: "We do not say that none else but the negro can share in this protection. * * * And so, if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply though the party interested may not be of African descent." To these words of grace, may be added the dissenting opinions in the same case, and much in like spirit may be found in *Missouri vs. Lewis*, 101 U. S., 22; and in *U. S. vs. Cruikshank*, 92 U. S., 542; and in the *Sinking Fund Cases*. These sayings encourage the hope that this great ordinance will never be dwarfed into a mere remedy for a single wrong, and that of a nature which, with or without constitutional cure, must have been ephemeral in a civilized land in the last quarter of the nineteenth century.

At this point it behooves me to maintain that the fourteenth amendment operates upon associations of individuals, that is to say upon *corporations*, as well as upon individuals singly.

The word used to denote those embraced in the amendment is "persons." This word, as found in the Constitution, and in other solemn instruments, has by long and constant acceptance, and by multiplied judicial construction, been held to embrace *artificial* persons, as well as *natural* persons. Law-givers and law writers of the highest authority have so fixed immemorially the scope of this term.

Corporations of the strictest sect, corporations specially created by royal grant, monopolizing the most exclusive and artificial attributes, have been, in instances without number—it may be said uniformly—held to be within the designation "persons." Coke, Blackstone, Kent, Marshall, Story, and all the galaxy from which in recent centuries has shone "the gladsome light of jurisprudence," again and again declared "persons" to be, and in law to mean, both natural and artificial beings.

The terms "persons," "occupiers," "inhabitants," even "individuals," have each been often held to include corporations, or artificial persons.

Some of these cases are referred to in the opinion in the Circuit Court of Mr. Justice Field; others are collected in a note in 13 Federal Reporter, p. 785; still others are given in the brief of my associate, Judge Sanderson, at pp. 31 to 48.

Among these authorities are instances in which, *in favorem vitæ*, the construction was with the strictness applicable to penal statutes; and still "person" was held to include a corporation.

It must be remembered, too, that corporations, as known in England, and also in America, so long as they were created by special grant and charter, were ethically and legally more distinct and independent entities, more substantial and vital "abstractions," than the voluntary associations which now, under general laws free to all, do business under a corporate or coöperate name; or, in the words of Mr. Justice Grier, "only a fictitious name." Yet it is to such specially created and highly endowed and favored corporations that most of the authorities referred to relate.

The defendant here, in respect of its property, is in law and in fact but the business style of individual owners, united and coöperating in a common undertaking, and who, as mere method and convenience, conduct business through corporate agency. Be it a church, a hospital, a library, a hotel, a mill, a factory, a mine, or a railroad, the property and assets of a corporation belong to no one save the creditors and the shareholders.

Suppose, in South Carolina, a society of colored men should incorporate themselves and acquire a hospital, a college, a lyceum, or a church; and

this property should, by statute, be confiscated, either by discriminating taxation or otherwise, can it be supposed that the fact of their having formed a corporation, rather than a joint stock company or a partnership, would exclude them from the protection of the fourteenth amendment? Could such a cramped construction be given to the amendment, even if the rule of its construction restricted its operation to only the cases known or foreseen by those who chose the language?

The constituents of the corporation, the men and the women who composed it, would be the real parties in interest, and the Court would deal with them—not with names, but with things.

The doctrine here invoked is found in numerous decisions.

Bank of U. S. vs. Deveaux, 5 Cranch, 61.

Marshall vs. R. R. Co., 16 Howard, 314.

Society, etc., vs. New Haven, 8 Wheaton, 464.

United States vs. Amedy, 11 Wheaton, 392.

Sinking Fund Cases, 99 U. S., 718.

N. W. Fertilizing Co. vs. Hyde Park, 3 Bissell, 480.

Revised Statutes of U. S., Ch. 1, Sec. 1.

Atkins vs. Gamble, 42 California, 86; also, 57 California, 594.

Note and Cases, 13 Federal Reporter, 782.

Suppose colored men in Louisiana should, as a copartnership or joint stock company, acquire a theater or baseball ground, and, upon confiscation of their property, should receive the protection of the National Courts acting under the fourteenth amendment, and afterward should incorporate themselves for the management of the same property for the same purpose—if a second and like confiscation should occur, can it be that the same Courts would say that the right of protection was lost by the act of incorporation, and might be revived again by resuming a copartnership name?

I have put the case of colored men. Let me transpose the illustration. In several States colored men outnumber white men. Suppose in one of these States, laws should be contrived by the colored majority, or a Constitution set up, under which the property of white men should be confiscated, surely the Court would not say the Constitution is dumb, but would speak, if only the parties to the record were reversed.

I have sought to convince your honors that the men who framed, the Congress which proposed, and the people who through their Legislatures ratified the fourteenth amendment, must have known the meaning and force of the term "persons."

Let me now turn your attention away from this surmise to the real question to be answered. Let me remind you that the scope and effect of a general provision is never to be ascertained by seeking for the particular cases which the author had in thought at the time the provision was drawn or adopted. The Court cannot acquit itself as interpreter and expounder by visiting, if the Court could visit, the minds and thoughts and hopes and fears and doubts and expectations and anticipations of those who took part in devising the Constitution. The true question, in exploring the meanings of the fourteenth amendment, is not, in a given case, whether the framers foresaw that particular case and acted in reference to it—the inquiry is, does the case fall within the expressed intention of the amendment? All cases compassed by the letter of the language must be included, unless obviously repugnant or foreign to spirit and purpose.

I ask the Court to listen to the rule of construction as laid down in the Dartmouth College case by a great and rugged magistrate. The words are the words of Chief Justice Marshall, speaking for the Court:

"It is more than possible that the preservation of rights of this description was not particularly in the view of the framers of the Constitution when the clause under consideration was introduced into that instrument. It is probable that interferences of more frequent recurrence, to which the temptation was stronger, and of which the mischief was more extensive, constituted the great motive for imposing this restriction on the State Legislatures.

"But although a particular and rare case may not in itself be of sufficient magnitude to induce a rule, yet it must be governed by the rule when established, unless some plain and strong reason for excluding it can be given. It is not enough to say that this particular case was not in the mind of the convention when the article was framed, nor of the American people when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied as to exclude it, or it would have been made a special exception. The case being within the words of the rule must be within its operation likewise, unless there be something in the literal construction so obviously absurd or mischievous or repugnant to the general spirit of the instrument, as to justify those who expound the Constitution in making it an exception." (4 Wheaton, 644-5.)

Could words—even prophetic words—more closely fit the position I maintain?

Who would be so rude as to suggest that committee, Congress, or people, when engrafting the fourteenth amendment upon the Constitution, omitted, only because they forgot it, to say that citizens might be stripped of their possessions without due process of law; provided only the spoliation should be under pretense of taxation and the victims robbed in a corporate name?

If any man dare affirm such a belief, it must be one ignorant of the fact that Congress, when the amendment had been adopted, declared, in effect, that the shield of "equal protection of the laws" extended to *taxes, licenses, and the like*. This legislative construction was declared in the Civil Rights Act adopted as a substitute of an Act passed before the ratification of the fourteenth amendment. The first Act had not assumed to forbid unequal taxation; but, in the second Act, under the warrant of the new amendment, Congress added discriminating taxation, in or by a State, to the list of offenses against the laws of the United States.

Judge Story, who also sat in the Dartmouth College case, and delivered an opinion, reiterates all that I have read from Marshall, in his Commentaries on the Constitution, Section 1395.

Who has ever gainsaid the canon of construction and interpretation thus plainly spoken from this bench?

With such a key to the import of a provision, how minor and needless become conjectures about what the actors in a past scene knew or thought, or expected or believed, as to incidents or events in the future which might invoke the aid of a principle of law.

Man being human, and his vision finite, it is well that saving ordinances need not be shrunken in their uses or duration to the measure of what the framers foresaw.

Truths and principles do not die with occasions; nor do they apply only to events which have cast their shadows before.

The statesman has no horoscope which maps the measureless spaces of a nation's life, and lays down in advance all the bearings of its career.

"Futurities are naked before the all-seeing eye."

All that wisdom and science in legislation can do, is to establish just principles and laws; this done, every case which afterwards falls within them, is a case for which they were established.

A tree, a fountain, a lamp, set in the public way—a beacon on a cliff—a buoy on the sea, for whosever sake first thought of or provided, becomes the benefaction and common property of wayfarers, whoever they may be.

To the Mongolian and the Caucasian, as well as to the African, the Constitution says: "*Humani nihil a me alienum puto.*"

"The hand that rounded Peter's dome,
And groined the aisles of Christian Rome,
Wrought in a sad sincerity,
He builded better than he knew!"

Those who devised the fourteenth amendment wrought in grave sincerity. They may have builded better than they knew.

They vitalized and energized a principle, as old and as everlasting as human rights. To some of them, the sunset of life may have given mystical lore.

They builded, not for a day, but for all time; not for a few, or for a race; but for man. They planted in the Constitution a monumental truth, to stand four-square whatever wind might blow. That truth is but the golden rule, so intrenched as to curb the many who would do to the few as they would not have the few to do to them.

If it be true that new needs have come, if it be true that wrongs have arisen or shall arise which the framers in their forebodings never saw—wrongs which shall be righted by the words they established; then all the more will those words be sanctified and consecrated to humanity and progress.

Before passing to another head of my argument, I beg to remind the learned Chief Justice and the Court, of the language of the Court speaking through him in the Sinking Fund Cases. Clearly the passage I shall read assumes that corporations are within the protection of the fourteenth amendment.

Here it is, 99 U. S., 718:

"The United States cannot, any more than a State, interfere with private rights except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, *but equally with the States they are prohibited from depriving persons or corporations of property without due process of law.*"

I come now to insist that the proceeding by which the defendant was assessed and taxed was not "due process of law." Judge Cooley defines "due process of law," thus: "Due process of law in each particular case means such an exertion of the powers of Government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."

The proceeding need not be judicial; it may be administrative. But it must give opportunity to be heard, and heard in season, and upon the right or matter in question. This is as true in respect of property, as of liberty, or life—as true in respect of taxing property upon its value, as of taking property for public use.

To this proposition I cite *Stuart vs. Palmer*, 74 N. Y., 191, where many authorities will be found referred to. Nothing can be more instructive, however, than the opinions of Justices Field and Sawyer in the case at bar.

It is not enough, as my learned friend seemed to argue, that the party might, by favor or by chance, be accorded a hearing, or that the assessment may, in fact, be fair. The Constitution or statute authorizing the proceeding must positively provide for notice and hearing. Such is the doctrine of the authorities at large. The learned counsel said we might have applied to this State Board to make a rule—a rule under which we might have had a special dispensation. To state such a proposition is to dispose of it.

Our complaint here, I beg to say, is not, as the learned counsel seems to suppose, that two tribunals have been invested with power to assess; nor that railroads are assessed by a State Board; nor that their capital and franchise are assessable as entireties, and their road not by sections in tax districts. These are objections considered in the Illinois case; they are not the objections here.

The objections here may be quickly stated:

First—The general law requires property to be assessed at its full "cash value," that is, the value at which it would be taken in payment of a debt from a solvent debtor. The special provision as to the property of the defendant is that it shall be assessed at its "actual value," without defining "actual value" or laying down any rule by which it shall be determined.

Second—The Constitution of California ordains that no local or special law shall be made for the assessment or collection of taxes. But the property of the defendant is subjected to a special law, and an invidious rule.

Third—Taxpayers in general are given a hearing and notice, but the defendant is assessed without notice or opportunity to be heard. The learned counsel argued that the defendant had notice. I say, first, that the answer alleges, of course the demurrer admits, that the defendant had no notice whatever. The answer alleges, and the demurrer admits, that the defendant had no opportunity to be heard—none whatever. The learned counsel says that the Board had power to make rules. I reply that the answer alleges, and the demurrer admits, that the Board had made no rules whatever. The learned counsel says that to consent to "furnish," in the language of the statute, a list of property and earnings was to acknowledge the correctness or validity of the assessment. I answer that the statute which makes it obligatory to furnish the list says no such thing, and implies no such thing.

But to pursue my list of the objections we do make to the process of assessment:

Fourth—Taxpayers in general are given an appeal from the Assessor to another tribunal—a local Board of Equalization. The defendant has no appeal, and its property is assessed by a body which has no power to equalize assessments of or for individuals, but only the total assessment rolls of counties.

Fifth—Taxpayers in general are assessed under predetermined rules of evidence and notice, and a prescribed mode and manner of assessment—rules made by the Legislature, uniform in all counties and permanent. The defendant is assessed by a body for which no rules are made—a body which makes its own rules. No rules are predetermined; and if made, they may be changed at pleasure. They need not be uniform, and no notice is required to be given.

Sixth—Taxpayers in general are entitled to deductions for liens on their property. The defendant is denied all deduction.

Seventh—Railway property in general, or rather the property of railroads generally, is not subjected to these special provisions and denials, but only

the property of railroad companies like the defendant, doing business in more than one county.

Eighth—Property in general operated in more than one county, such as telegraph property, water channels, flumes, and the like, is not subjected to the treatment or terms prescribed for the defendant, but only property of the exact description of ownership of the defendant's property.

And lest I may not be understood at this point, I beg so far to repeat myself as to say that according to this Constitution, flumes, water channels, turnpikes, and telegraph lines, and other property situate in or operated in more than one county, are to be assessed like property in general, under all the provisions constituting "due process of law," and the property, and only the property of a few, of whom the defendant is one, no matter what species of property he may own, or whether it be operated in different counties or not, is selected to be visited, tabooed, and outlawed. The sole test is, does the person operate a railroad in more than one county; if so, then all his property is outlawed.

Such unjust and discriminating requirements are not "due process of law," and no matter by what State instrumentality they are inflicted, whether by one of the departments of its government, or another, or by all, or by the organic law of the State, the fourteenth amendment of the Constitution of the United States acts upon them and prohibits them.

Virginia vs. Rives, 100 U. S., 313, 318.

Ex parte Virginia, *idem.*, 339, 346.

These are the objections constituting our argument that due process of law was not observed in taking the defendant's property, or in burdening it by taxation.

Rather than dwell upon them, I would ask your attention to my next proposition.

"Equal protection of the laws" is denied by an ordinance which provides that taxpayers in general shall be taxed on the cash value of their property, less the amount of incumbrances upon it; and that certain selected taxpayers shall be taxed on the actual value of all their property, without deduction for incumbrances. If the discrimination be not founded on the nature of the property, nor on the use made of the property, and be not confined to specified kinds of property, irrespective of its ownership, or applicable to all property of the same kind, then the distinction is founded on *ownership* and is leveled at particular owners.

This is unjust taxation, utterly at war with the fundamental principle on which all rightful taxation rests.

Abundant warrant for this position, will I think, be found in—

Cooley on Constitutional Limitations, 4th ed., pp. 622, 624, and authorities there cited.

Cooley on Taxation, p. 129.

Knowlton vs. Supervisors, 9 Wisconsin, 410.

Bank vs. Haines, 3 Ohio St., pp. 1-15.

Woodbridge vs. Detroit, 8 Michigan, 274, See 306.

People vs. Whyler, 41 California, 351.

People vs. Lynch, 51 California, 15, See 20.

Lexington vs. McQuillan's Heirs, 9 Dana (Ky.), 135.

People vs. Weaver, 100 U. S. 339.

Board of Supervisors vs. Stanley, 105 U. S. 305.

Hills vs. Albany Ex. Bank, 105 U. S. 319.

Evansville Bank vs. Britton, *idem.* 322.

In the latter case (National Bank vs. Britton), the tax system of Indiana did not permit deduction of debt from assessable personal property in gen-

eral, but only from "credits, or money at interest" and "other demands against persons or bodies corporate;" yet this Court said bank shares must be put on the footing of the most favored property. The Chief Justice, and Mr. Justice Gray dissented, on the ground that Indiana's system did not confer the right of deduction for debt in respect of the same class of property, and therefore no inequality appeared; but the whole Court concurred in holding that if discrimination be made in the same class of property, the vice will be fatal.

Dealing now with what I suppose to be the major point of the argument on the other side, I deny that this proceeding was a lawful "classification of property for taxation."

The Constitution of California makes no classification of property for taxation. On the contrary, it declares all property to be taxable, save only such as it exempts—crops, school property, etc. Suppose, then, it was provided in this Constitution that school property and crops belonging to Episcopalians, or native born citizens, or Communists, or Democrats, should be exempt; and that the same kind of property belonging to others, or to quasi public corporations, should be taxed, and taxed without deductions for liens upon it—would there be any difference in principle between that case and this? Such provisions might seem more glaring to a layman; but would they, in law or in ethics, seem more glaring to this tribunal. Suppose the Constitution, or the Legislature, had said schools, unless they belong to such and such people; growing crops, unless they belong to quasi public corporations, or railroad companies, shall be exempt; thereby meaning if they do belong to these particular owners, then they shall be visited without any deductions for liens upon them, although all the other properties and ownerships in the State, real, personal, and mixed, are free from taxation to the extent of the liens upon them.

Classification, to be lawful, must distinguish between different kinds of property. If land is to be favored by a partial rate, it must be all land, certainly all land of the same kind, and in the same place. I am now speaking of taxation of property as property, and taxation upon values; not of poll taxes or licenses. If it be improvements of land, edifices, wells, shade trees, irrigating channels, coal beds, mines, quarries, or the like, which are to be favored, it must be all such improvements or developments.

My learned friend says a statute would be competent which authorized the assessment of the property of a wife to her husband. Yes; if the rule was uniform. But even in that inconsequential, exceptional, and merely formal case, would it be competent to provide that the property of a *femme covert* might be assessed to her husband, unless her husband was a member of a quasi public corporation, and that then it should be assessed in some other way, which other way would visit it with heavier burdens? Would that do? My learned friend will hardly say that.

Suppose it were declared that all outstanding debts incurred in making betterments, or in developing mines, quarries, and coal beds, or in digging irrigating ditches, should be deducted in assessing their value, unless the property belonged to a married man, or a copartnership; and in such cases no deduction should be made. In these instances obviously the test applied would be the ownership. The test would be, not the *kind of property or the use to which it was put or even the locality, but who owns it*. Is not that this case?

I now cite the authority of counsel on the other side to the position I am endeavoring to maintain. He said deliberately yesterday, in the hearing of your honors, that if the question which arose in the Sun Insurance case in New York, had been this—if the Act of the Legislature taxing the

surplus of insurance companies had taxed only the surplus of owners over seventy years of age, it would have been unconstitutional, and would have been a denial of the "equal protection of the law." Is that case so strong as this? In that case there would be at least a sentimental equality; nature's laws suggest it. Every man, if he lives, will be seventy years of age; if he dies he will not afterward miss what he has lost, if the loss be of money, or profit by what he has not lost.

But in this case the distinction is wholly arbitrary and invidious, and laid on those whose vested rights existed at the time. The defendant organized years ago under the Act of 1861. Many persons, citizens, the answer avers, of California and other States, came forward and paid money in good faith to construct its railroad and acquire its property. This corporation, with its property and *cestui que trusts*, existed already when this novel Constitution came in, and finding it and its shareholders with their vested rights, Article XIII says, not those of you who grow to be seventy years of age, not those of you in respect to whom some natural contingency shall occur in the future; but *all of you* shall be assessed as nobody else is assessed, not upon a particular kind or particular kinds of property, not upon property hereafter acquired, but upon all the property, all manner of property which you, aggregated, hold, or may hold, no matter whether it be a tract of land in a distant county as far as the great area of California (and she has 185,000 square miles) will permit one tract of land to be distant from another, no matter how dissevered from your railroad, no matter how impossible from its nature to be used as railroad property, no matter how utterly divorced from the uses of a railroad corporation, no matter how unproductive it may be; it is enough for the Constitution to know that you own it, and because you own it, it shall be visited as that property would not be visited if anybody else owned it, and as no other property is visited. Is that lawful classification? Could the wit of man suggest a greater burlesque or travesty of the idea of the classification of property for taxation than that; infinitely worse, as it would be, than the case the learned counsel himself put, in which he said the vice of inequality would be fatal.

Again, the learned counsel said that duties and imposts must be uniform throughout the United States. We were reminded from the bench that the uniformity there meant is geographical; but take that provision for illustration, take it as the learned counsel understood it, and let me ask this question: Suppose the revenue laws of the United States provided that on such and such imports a duty of one per cent ad valorem should be collected, but that railroads and other quasi public corporations should pay two per cent ad valorem, and should pay double duties on anything else they should import. Taking uniformity to mean, not geographical but more especially ethical uniformity, has any member of the bar the courage to contend in this presence that such a provision would not be an affront to the Constitution, a violation of it in its very teeth? And yet the case in hand is that case, with an additional ingredient of offense in it.

Property situated partly in one county and partly in another, is not thus selected for "classification," even if that would be competent.

Property "operated in more than one county" is not thus selected, because in fact and in law it appears that telegraphs, flumes, stage and turnpike roads, water-ways, and other kinds of property are operated in more than one county in California, and yet are assessed with deductions, and required to be so assessed. The distinction cannot rest on *use*, for all property used in more than one county is not "classified" alike.

It cannot be said that *railroad property* is a class by itself, and is so classified and treated. Railroad property is largely real estate—land.

Locomotives and cars are not classified by themselves, because, unless owned by "railroad or other quasi public corporations," liens upon them are deducted.

But more than all—most of all—it is not "railroad property," or property used in railroading, that is thus outlawed; but all manner of property, the title of which is in a railroad or quasi public corporation. How can such a pretension be disguised as classification of property for taxation?

The distinguished counsel said that it would have been impossible, or would be impossible, to make deduction for railroad mortgages. I would ask him, and this learned Court, Why would it be impossible, or even difficult, to provide for the deduction of a mortgage given by a railway corporation to the two trustees whose names appear in the answer? The property of the railroad is to be taxed under this scheme, in lump, as an entirety. If the mortgage amounts to \$2,133,000, can it not be deducted in a lump? What necromancy, magic, or miracle is necessary for this? Has not this Court given judicial superintendence of the act and the methods under which trustees and those in charge paid, in gross, the tax on interest coupons, and then at their own pains and in their own methods (not very troublesome) made the deductions specifically from each coupon or bondholder of his aliquot part? Is there any reason, I repeat—although I do not consider the question very important in finding the law of this case—is there any reason why this railroad mortgage, as one debit, should not appear in the account?

MR. RHODES: The lands are not to be assessed as a lump; they are to be assessed separately.

MR. CONKLING: Well, what then? My learned brother no doubt means that each parcel of land being covered by the whole mortgage, it would be difficult to find and deduct the proportion due to each parcel. How does this fact answer my suggestion? The mortgagor—the defendant—is to be assessed in bulk upon its "franchise, roadway, roadbed, rails, and rolling stock." These are the words of California's Constitution (Article XIII, Section 10). The assessment, in fact made, appraised the actual value of these properties at \$16,500 per mile of road. The mortgage amounts to \$3,000, or thereabouts, per mile of road. Can anything be more simple than to deduct \$3,000 from \$16,500, unless it be more simple to deal with totals—make one sum of it—and deduct \$2,133,000 from \$11,739,915?

In this instance the margin to deduct from is quite broad; suppose it were quite narrow; suppose there were no margin at all, because of the road being mortgaged for all of its worth. Then there would be no value to assess to the mortgagor, and the whole value to assess to the mortgagee. This would be right and just, and this is what California does in the case of all other mortgages.

Put any imaginable case of relative values between mortgagor and mortgagee, and the same general principle of fair dealing will work out just results and just assessment and taxation.

Considered not as matter of right, or of law, but merely as matter of finance—as matter of bookkeeping—what does it signify, what difference need it make, that a deduction of the lien in bulk from the railroad in bulk would leave scattered and distant lands to respond, and respond without deduction, in the tax districts wherein the lands lie? No loss of rightful revenue would follow. The article just referred to declares that the lump assessment shall be "apportioned to the counties, cities and counties, cities, towns, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid" therein.

If it be said that there are counties wherein there are lands owned by

railway companies, but no railway; and that such counties would reap advantage because of rating the lands without sharing the deduction, there are two answers. First, State as well as county taxes reap the supposed advantage; second, if the State wishes to exactly adjust items and fractions, she can do so by providing for the ascertainment or appraisal of the proportion of the mortgage which should be attributed to lands separate from the roadway and its appurtenances, and to such lands in severalty. It cannot be said that by thus putting the defendant on a footing with other taxpayers the value of the mortgage would escape assessment or be lost to taxation; because, as other mortgages are "deemed and treated as an interest in the property affected thereby," and as the same kinds of property, when held by other owners, are "assessed and taxed to the owner of the property, less the value of such security, mortgage," etc., so the mortgage in question and the property in question could be, and should be, "deemed and treated, assessed, and taxed." Thus just taxation would fall on the whole value, and at the same time the tax would become a lien and its payment be insured.

I have a farther thing to say, but I will fit it with a better time, of what seems to me the greatest wrong of this whole proceeding—the visitation of these distant lands, alien to the railroad, isolated from it, with unjust and vindictive taxation, merely because of hostility to the proprietor who owns them.

The learned counsel said, in answer to his honor Mr. Justice Bradley, that railroad mortgages are not taxed under this scheme. I say, with all the emphasis I can command, that this Constitution ordains that they shall be taxed. They are assessed, they are taxed; the tax to be paid not by those from whom the tax is due, but by those from whom it is not due. All of these several tracts and parcels of land, which the counsel referred to a moment ago, together with all the other estate of railroads, are taxed at their "actual value"—whatever that may mean—a term for some reason specially chosen, because the term employed for everybody else is "cash value," the meaning of which we do know; all possessions—even choses in action—are to be assessed at their "actual value," and no deduction for mortgages is to be made. In the name of common sense, is not that an assessment upon and including the value of the mortgage? Is it not, in other words, counting, as unimpaired by the mortgage, the whole property on which the mortgage rests; and is it not a contrivance by which there is to be lifted from the shoulders of the mortgagee and placed on the shoulders of the mortgagor, the burden which the mortgagee should bear, and which the mortgagee of every other mortgagor throughout the State, does bear? And yet the learned counsel still murmurs about a "classification" for purposes of taxation, and will have it that the value of the mortgage is not taxed at all.

Resuming the thread of my argument, it cannot be said that land and rolling stock, when used for railway purposes, are "classified" alike; because, if used in any one county they are assessed by the local Assessor, with an appeal to the Board of County Supervisors, and allowed the same deduction bestowed on other property.

It appears, as we have seen, that the defendant owns divers tracts of land in different parts of the State. The Constitution of California declares that these tracts of land—not used for railroad purposes, but merely because they belong to a railroad company—shall be visited with full assessment, no matter how heavily they may be mortgaged. These lands are, as much as the roadbed, within the words of Section 1, Article XIII—"except as to railroads and other quasi public corporations," etc.

All manner of property so owned, no matter where situated or how used. I cannot refrain from repeating, must be exceptionally assessed and taxed. Thus it is manifest that no class or species of property, and no property distinguished by its use or locality, has been selected from the mass of taxable property, and subjected to a special rule; but all the property of certain owners, *because of its ownership*, has been withdrawn from the rule applicable to just such property, and exposed to *ex parte* assessment at an invidious rate. What becomes of the maxim often found in the judgments of the Court, that assessments and taxation must be uniform and equal, at least as regards subjects of the same class? And here I beg to read a passage from the opinion of Mr. Justice Miller in the Railroad Tax Cases. (92 U. S., 612.) These cases passed off upon two grounds—certainly as much upon one as the other of the two. The bills were in equity, to restrain the collection of a tax. Says the learned Justice, speaking for the Court:

“Even if this were not so, a bill in equity will not lie to restrain the collection of a tax.”

The case arose in Illinois, where there is a State Board of Equalization, which, by the way, is not one of our complaints; there is no complaint here, as I have said, that there must be one and the same tribunal for all assessments. Our contention is that there must be a tribunal—some tribunal before which—some forum in which we may have “due process of law” and “equal protection of the laws.”

The opinion proceeds:

“There can be no doubt that all the classes named in this clause, including peddlers, showmen, innkeepers, ferries, express, insurance, and telegraph companies, are taken out of the general rule of uniformity prescribed by the first clause, and the only limitations as to them *is that of uniformity as to the class upon which the law shall operate*; that is, innkeepers may be taxed by one, ferries by another, railroads by another, *provided that the rule as to innkeepers be uniform as to all innkeepers, the rule as to ferries uniform as to all ferries, and the rule as to railroad companies be uniform as to all railroad companies. As we have seen no evidence that the rule by which railroad property is taxed is not uniform in its action on all the railroad companies in Illinois, we can perceive no opposition to the Constitution of the State in that rule.*”

This is one point on which your honors will be compelled to pass in this case. Instead of the provisions here applying to all railroad companies, certain railroad companies have been selected, viz., those who operate a road in more than one county. They are the persons proscribed, alone proscribed, and proscribed as to all their property. The answer avers, although it was not necessary so to aver in order to raise the question, that there are other railroads, many of them in California operated in not more than one county—operated in a single county. This project of vindictive taxation does not touch them at all; they are left with the general mass of taxpayers upon whom no special pains and penalties are inflicted. But with ingenious description, as a cunning mode of identification, with words employed for that purpose as certainly as if they had put into the Constitution the name and style of these three or four corporations, these craftsmen select them, and say to them, and to them only: “You shall be assessed without notice, without hearing, without due process of law, and assessed on no day certain. When the assessment is made up, it shall be like the laws of the Medes and Persians, final and conclusive. The assessment shall be at a valuation special and peculiar to you. It shall represent the actual value (whatever that may mean) of all your property, and it

shall represent that value undiminished, even in the estimation of a hair, by liens and mortgages upon it, although they may equal its entire value. And this is the rule, not for all railroads, but for some, such as you, and for nobody else, which this wonderfully contrived organic law, the offspring of commotion, metes out."

And I stand here to vex the ears of your honors by arguing whether such flagrant wrongs is, in legal constitutional contemplation, lawful classification of property for purposes of taxation.

Again, by the Constitution of California, mortgagor and the mortgagee are made tenants in common of the taxable estate; and each is made liable for his share, and only for his share of taxation. That is the essence of the general tax scheme. The mortgagor and mortgagee are tenants in common, each of his proportionate interest in the taxable estate. Yet, the defendant as co-tenant is compelled to pay the tax of the whole estate, although everybody, except him and his companion victims, is to pay only a just aliquot part. Drop the fact of the defendant being a corporation or aggregation of citizens, and put the case between individuals. Suppose it was provided that mortgagor and mortgagee should each bear his proportion, unless one was a lawyer or a doctor or a married woman, and the other not; and in that case the lawyer or doctor or married woman would pay the whole; would not such a contrivance be on all fours with this case as it is? If it be said that the fact or accident of a mortgagor being a quasi public corporation exposes him to be specially visited, why may it not be said that the fact that a mortgagor is a Swedenborgian or a spiritualist or an infidel, exposes him in the same way?

It cannot be doubted in the case at bar that a personal judgment beyond the lien on the property must follow the assessment. I have already referred to the complaint and to the statute on which the action stands. The whole purpose is to make certain persons as such an exception to all other mortgagors.

Even the half-born statute—the bill which miscarried, and which, in a case we have heard cited from the "Pacific Coast Law Journal," was assumed by the Court to have passed and become a law, although it never did—even this so called statute is a mere juggle, as your honors will see by looking to the brief—the very instructive brief of Judge Sanderson, at page 15. It was devised to mask the ugly features of this curious tax scheme. It stuck to the original design, however, and would have given no real relief. Yet it pretended to provide a mode of contesting the action of the State Board. Its effect was as follows: "Any person feeling aggrieved" might, upon payment of the tax, bring an action, and show the "illegality of such tax," or that the property "was assessed for more than its actual value." Is not the sham of such a provision transparent? "The illegality of such *tax!*" What does that mean? Surely it does not mean the assessment, which is the matter to be reached. It means that if a tax has been laid which in general, in and of itself, is illegal, "any person feeling aggrieved" may prove the illegality. Nothing could be more remote from the ground of complaint here. What else does it permit "the person feeling aggrieved" to do? To show that the property "was assessed for more than its actual value." That is to say, if the State Board has done the very thing commanded by the Constitution—has assessed actual value, regardless of liens and deductions—then the "person feeling aggrieved" has no remedy or relief. But if the Board has done something beside executing the vengeful judgment of the Constitution, for that something else relief may be asked. Were this bill to become a law, or had it been a law when the assessment complained of was made, under its operation

the defendant could not take one step toward challenging or testing the exaction to which, by the Constitution, he was doomed.

Thus, with or without such a statute, we must face the mandate of California's Constitution. The scheme there formulated is on all fours with the provisions existing in most of the States that a taxpayer may offset his debt against his assessment for personal property, with an addition excluding certain selected or unpopular or unfashionable taxpayers. Your honors have witnessed such attempts. You saw the attempt made against holders of shares in national banks, and you straightway arrested the attempt.

An Act of Congress permitted States to tax national bank shares, as the law permits them to tax other property, that is fairly and equally with other like property. States sought to assess these shares at rates above other similar property. States sought also to withhold from owners of bank shares the right of deduction given in respect of other property. You annulled the whole proceeding. Why?

Because such discrimination is unlawful. An Act of Congress so virtually said, and in so saying only declared the general law.

But does a congressional declaration make the case stronger than one which the whole body of the law, with its immemorial and fundamental principles, cries out against?

In *People vs. Weaver*, 100 U. S., 539, you put the case of two persons, side by side, one having his money invested in bank shares, and the other in different shares—one permitted to deduct his debts, and the other denied the same right. You put the case as one offensive to the law and not to be tolerated. That very case is now before you; aggravated, seriously aggravated, as we shall see in a moment.

In California, one individual or corporation owns land or other property incumbered for half its value. He pays taxes on one half, and only on one half. Another corporation owns the adjoining land or the same species of property, and it, too, is incumbered for half its value, and the owner pays taxes on both halves. One is taxed twice as much as the other. The next day the property is sold to another individual or corporation, subject to the mortgage, and the next year the same property, by merely changing hands, has become entitled to relief from half its tax. The defendant owns one of the tracts of land spoken of, this year. It is burdened by a mortgage. He is assessed and taxed upon it regardless of the mortgage. Tomorrow he sells it to an individual or a corporation not thus proscribed, subject to the mortgage; and when next the property comes to be assessed, it is not only assessed by a different tribunal, under different methods and rules, but the mortgage, and the whole of it, is deducted, and the property liberated from the portion of the tax, merely because it has changed owners. And this is "a classification of property for taxation!" Two farms lie side by side, or two dwelling houses stand side by side in California. They are of exactly equal value. Both are mortgaged for half the purchase money. One belongs to a railroad company. The other belongs to a mining company. One is assessed at its actual value, regardless of the mortgage. The other is assessed for only half as much.

The two owners exchange properties; and because they have exchanged, the property which yesterday was half exempt, to-day is wholly subject to assessment; and the property which yesterday was all assessable, to-day is half exempt.

Is this "classification," or *quasi* classification—persecution or *quasi* persecution—"equal protection," or *quasi* protection?

Is not the wrong, as I said a moment ago, an aggravation of the abuse

attempted in the case of national bank shares? Is it not a more flagrant assault on law and right? In the instance of the bank shares, the discrimination would stick to the property, no matter in whose hands, or however often transferred. Whereas here, the assessment is smart money inflicted on *particular persons*.

If the defendant owns shares in a national bank, paid for only in part, subject to a "contract, or other obligation by which a debt is secured," these shares are assessable at their "actual value," regardless of the outstanding claim. But let the title to the shares be made over to an insurance, or a manufacturing, or a turnpike company, and *ipso facto* their assessable liability is reduced by the amount of the claim.

Turn the subject around and look at it in another light. The defendant as mortgagee holds a mortgage against somebody else. If held by an individual, the Constitution of California would permit him to preserve his security. Should the owner of the mortgaged property fail to pay his taxes, any holder of the mortgage except a "railroad or other quasi public corporation," could protect the property and prevent a tax sale by paying the tax, and it would "thereby become a part of the debt so secured," that is, part of the mortgage debt. But the defendant and his like, are excepted out of the operation and benefit of the whole clause, of which such permission to the holder of a mortgage is an integral part.

Whether debtor or creditor, whether mortgagor or mortgagee, the defendant is "between the devil and the deep sea."

Whichever way a "*quasi* public corporation" turns in California, in the words of Junius it is "clipped by the long scissors of the law"—perhaps the rendering now should be "classified" by the long scissors of the law.

Can your honors listen to these recitals, and doubt that vengeance brooded over the conception and the birth of such a Constitution?

Can your honors deal more humanely with such acts, even when done by an American State, than to rank them among "the brutalities of progress?"

They were done by a Court. A convention which frames an organic law is a Court—a high Court of justice: and justice is depicted as a stony statue, with blinded eyes, with an arm unmoved by a throb of feeling, holding unshaken the even scales!

And these vengeful edicts were made in the name of anti-monopoly, equality, and right!

It has been often so. Vice in the name of virtue—rascality in the name of reform—demagogism in the name of patriotism—persecution in the name of justice—cruelty in the name of humanity—chaos in the name of order.

It was in the name of humanity, that a seeming majority flooded France with blood: and in the name of religion, that they would have dethroned the monarch of the skies.

Somewhere in one of these briefs it is written that the author has searched from the time of King John for so flagrant an instance of discriminating and arbitrary taxation within the pale of the common law, and that the example before us leads all the rest.

Be this as it may, for enterprise and ingenuity, for rude, yet cunning severity, for irreverence for law, for disdain of obstacles, appearances, and traditions, and for contempt of vested rights, it seems safe to say, that carried away by excitement, California has in form sanctioned provisions without parallel in the Constitutions of North American States, made by white men for white men, in our time.

I now put aside the modes and the hardships of this tax scheme, leaving

to my distinguished associates the rest which should be said of its denial of due process, and its refusal of equal protection of the law.

But the record displays another objection, not less grave than those which it has been my effort to state. To argue this objection, would require in abler hands more time than even the liberal allowance my associates have insisted on making for me. To hear it briefly stated, however, before he begins, is the right of my learned adversary who is about to follow me.

The assessment required by the Constitution of California, and by her statutes, and the assessment in fact made, includes the whole *franchise* of the defendant.

Inherent, inwrought, and indivisible, in this single and general assessment—blended indistinguishably with all the other values which enter into it, is not only the franchise originally acquired from the State, but also every faculty, attribute, and franchise derived from the United States. The defendant, if not a creature of the General Government, long ago became by adoption one of its permanent agencies and instrumentalities. As such agency and instrument, it had imposed upon it by Acts of Congress various perpetual conditions and obligations adapted to securing and preserving its existence and efficiency forever, not only as part of one uniform, continuous, transcontinental line of railway, but as a postal and military road.

The road, in fact, built, was constructed by direction of Congress, and with the aid and under the auspices of the United States. The laws of California gave no right to construct *such a road*; and the Acts of Congress were the sole authority. The time within which the road should be completed, was prescribed by Congress; and it was provided that should the defendant fail of the completion within the time, the United States should proceed, through other agencies, to complete it. Rules and regulations for the construction and use of the road, were prescribed by Congress; and these regulations included not only the location, gauge, and character of the road, but the subject of fares, charges, and tolls, for carrying passengers and freight. As part of its action to stimulate and insure the construction and maintenance of a national highway, Congress endowed the defendant with various benefits, advantages, faculties, franchises, and valuable rights; and reserved to itself—not to California or to any of the other States, or Territories soon to be States, through which the road runs—power, having regard to the rights of such company, to add to, alter, amend, or repeal the Act which conferred the right to build and maintain the road. The purpose of all this, was and was declared to be, to promote the public interest and welfare, and to secure to the United States at all times, but particularly in time of war, the use of such a highway for postal, military, naval, and other purposes. In the Acts of Congress, under which the road of the defendant was built, under which it exists, and is hereafter to exist, are penalties and forfeitures for default in the trust and agency thus created.

To this legislation, to this history, to this great and enduring transaction between the General Government and the defendant, the State of California, by solemn Act of her Legislature, assented; at the same time, in like manner, consenting in advance to any other terms, conditions, or relations which might grow up between the defendant and the United States; and “confirming to and vesting in the said company, its successors or assigns, all the rights, privileges, franchises, power, and authority conferred upon, granted to, or vested in said company by the said Act of Congress, and any Act of Congress which may be hereafter enacted.” (Statutes of Cali-

fornia, 1869, p. 883.) Whether this assent of California makes the case stronger than it would be without it, need not be argued now.

The defendant accepted all these terms, conditions, obligations, and trusts: entered upon them, executed them; and, in the consenting presence of the State of California, by great outlay of labor, energy, risk, and money, acquired vested rights; and became amenable to the national sovereignty, as its agency, its instrumentality, if not its creature.

Whether in virtue of all these events of law and of fact, the defendant became technically a national corporation; or whether it became endowed with a dual existence—an existence by the laws of California, and also an existence by the laws of the United States (as this Court said (1 Black. 286) in the case of a corporation existing by the laws of Indiana and also by the laws of Ohio, might occur), is a question rather curious than substantial, as regards the dominion which the Constitution of California attempts to assert.

Be the defendant the offspring, or only the adopted child of the National Government, practically and legally the same considerations deny the right of a State to step in and seize, appropriate, or control, the estate or endowment derived from the United States.

The power to tax, is the power to seize, appropriate, and control; therefore it is a power which may be used to destroy.

An Act of Congress speaking of one of these postal and military railroads brought into being for national purposes, declares: "No act of the company, nor any law of any State or Territory, shall impede, delay, or prevent the said company from performing its obligations to the United States." (16 Statutes U. S. 573.)

But before this Act, without this Act, without any Act of Congress, by virtue of the Constitution of the United States *ex proprio vigore*, it was and is not within the power of a State to tax the organs or agencies or instrumentalities or enginery of the General Government, whether created or selected. The reported cases which establish this position are too famous and familiar to need reference except to the pages at which they are found.

McCullough vs. Maryland, 4 Wheaton, 316.

Osborn vs. Bank of U. S., 9 Wheaton, 738.

Western vs. Charleston, 2 Peters, 449.

Dobbin's Case, 16 Peters, 435.

Western U. Telegraph Co. vs. Texas, 105 U. S., 460.

The counsel in opening for the plaintiff, referred generally to these authorities, as instances in which the Court has said that State taxation is unlawful if it destroys or impedes the operation of government agencies. I think I repeat him correctly; and if so, his exposition of the principle affirmed is radically erroneous. The Court never confined its denial of the right of the State to lay taxes on national agencies, to instances of taxes which destroyed or impeded. On the contrary, said the Court through Marshal, Chief Justice, "the power to tax involves the power to destroy, the power to destroy may defeat and render useless the power to create." Once concede the power to the State, and it *may be* used to impede, or even to destroy; and therefore the idea is repugnant to the Constitution that the supremacy of the General Government, and its faculties, are subject to the action of the States, or beholden to their forbearance. That is the argument and doctrine of the cases cited.

Does it not apply exactly to this case?

Could any form or application of the taxing power more certainly or vitally visit this national instrumentality?

Would any species of taxation, carried to a given extent, more certainly tend to impede its operations and destroy its efficiency and existence?

Would any kind or form of taxation be so pointed and inimical as this, unless, perhaps, that species of tax forbidden by the commercial or "vagrant" clause of the Constitution?

A tax on passengers or freight, destined to points beyond the State, or coming from points beyond the State, irrespective of the relations of the road as a Government agent, would, as your honors have held, be void as a tax on foreign or interstate commerce. A direct tax on traffic being thus impossible, can the Court suggest any sort of taxation which would reach the vitals of the defendant more surely than that here attempted?

Would a license tax such as Ohio undertook to impose on the Bank of the United States, in the case of Osborn, be more destructive?

Would a tax by way of a stamp required to be put on bills of lading or shipping bills, such as Maryland attempted to require of the Bank of the United States, in the case of McCullough, be more vital?

How *can* the faculties of a railway company, its right to be, and to act, and do business, be taxed, unless they are taxed by the assessment of its *franchise*? We shall not hear this question answered.

The case of Captain Dobbin, above cited, is doubly instructive. The learned counsel seems to doubt whether any one or anything can really and effectually become a government instrumentality by adoption. He seems to incline to think that the only thorough, authentic, untaxable government agency, is one specially, originally, and exclusively created by the United States. This distinction certainly deserves attention.

Captain Dobbin, at the Erie station on Lake Erie, commanded a revenue cutter, and

"Moved the monarch of her peopled deck."

He was an officer in the revenue marine; he was employed and paid by the United States. His business was to make his cutter walk the waters of Lake Erie, and see that nobody with a rowboat or a sloop should bring a keg of brandy or a barrel of whisky or beer into "the States" without coming by the way of a Custom House and having the duties laid upon it.

Pennsylvania had a statute taxing "all offices and posts of profit," and this statute looked wistfully at Captain Dobbin because he had a "post." Pennsylvania asked the Captain for a tax on his salary, and he declined to pay it. The report says he contested the tax on the ground that he was an officer of the United States. The State Court said he must pay, and he came and asked this Court whether he must pay. What did this Court say? Why, it went with Captain Dobbin, and authorized him to say, much as the Connecticut constable said when threatened with arrest, "Take care, stand off; don't touch me. If you touch me the whole commonwealth will shake!"

Now, Captain Dobbin was not created by Congress. He was not a corporation sole. As to him, there was no reserved power in Congress to repeal, amend, etc. Before he became an office holder he seems to have belonged wholly to the State of Pennsylvania. The original purpose of his creation seems to have been that he might support the Constitution of Pennsylvania, and support himself. In fact, it was probably for the latter purpose that he entered the service of the United States, and lent a helping hand to collecting the revenue. At all events, the Government took him as it found him, and adopted him as one of its instrumentalities to execute one of the powers of the Constitution.

Now, at the time Captain Dobbin had his day in Court, our learned

adversaries were not here to say that the immunity invoked had nothing to do with the case, because the Captain, not having been created by Congress, could not be invested with the exemptions and attributes of governmental agencies; and, furthermore, to say that because the tax was a mere trifle, and did not destroy him or his salary, or stop his cutter, no fault could be found with it. There seems to have been a hot struggle, however, and the Court, with the lights then before it, overthrew all the reasons assigned in justification of the tax. It drew around this single agent the inviolable circle of the "supreme law of the land."

Here is the language of the Court:

"Taxation is a sacred right, essential to the existence of government and the incident of sovereignty. The right of legislation is co-extensive with the incident to attach it upon the persons and property within the jurisdiction of a State, but in our system there are limitations upon that right. There is a concurrent right of legislation in the State and the United States, except as both are restrained by the Constitution of the United States. Both are restrained upon this subject by express prohibitions in the Constitution, and the States by such as are necessarily implied when the exercise of a right by a State conflicts with the perfect execution of another sovereign power delegated to the United States. *That occurs when taxation by a State acts upon the instruments, emoluments, and persons which the United States may use and employ as necessary and proper means to execute their sovereign power.* * * * In our view, it presents a case of as strong interference as was presented by the tax imposed by Maryland, in the case of *McCulloch* (4 Wheaton, 316,) and the tax of the City Council of Charleston, in *Weston's case* (2 Peters, 449), in both of which it was decided by this Court that a State cannot lay a tax upon the constitutional means employed by the Government of the Union to execute its constitutional powers." (429.)

As the Government found and took Captain Dobbin, so it found and took the defendant, and made it "the constitutional means" to "execute its constitutional powers."

As Judge Story so variously illustrated (Commentaries, §§ 1137, 1138, 1139), instead of building a ship, or a post coach, the Government buys or hires one; instead of building a post road, it adopts a road already built; instead of erecting a Post Office, or Mint, or Custom House, it rents one.

In all of these cases there is less of creation, as distinguished from adoption, than in the case at bar.

Upon what theory did Congress proceed in enacting Mr. Webster's Crimes Act in 1825? It inflicts exceptional and enormous punishments for assaults upon the most subordinate agents employed to carry or handle the mails, and for interferences with them.

The only excuse for such punishments which modern jurisprudence could accept is that they are safeguards thrown around the instrumentalities of the Government. The driver of a stage, the boy riding a mule with his saddle bags carrying letters, the clerk in a rented Post Office—all are enrouded with special protection, as so many representatives of the sovereignty of the nation.

Contrast with these petty examples the multiplied and enduring relations and trusts deposited by the Government with the defendant, and the complex consequences and interests involved.

Yet the learned counsel argues that California is the ultimate sovereign arbiter in the case. He declares that when twenty-nine years more shall have elapsed—because twenty-one of the fifty years named in the articles

of incorporation filed in California by the germ of the present corporation have gone already—that when twenty-nine years shall have rolled away, the hour will strike when this national organization will expire and dissolve. Then, of course, according to the argument, my friend here, the Attorney-General of California, with half the zeal of to-day, will proceed by *quo warranto* to take away the remains of animation, and if need be will have a receiver appointed to distribute belongings which came, as far as they came from public grant, chiefly from the United States, to be forever used in its service and behalf.

In twenty-nine years, at all events, by this theory, these most powerful external agencies of the Government must shrivel like a parched scroll. But whether so much grace shall be permitted, depends on the omnipotent majority in California—a majority of those who come out to vote, and are supposed to speak not only for themselves, but for those, no matter how many, who stay at home. Should the majority make up its mind, or its will, that such length of life is not good for “railroads operated in more than one county,” and repeal the general railroad Act of 1861—the Act under which the defendant first organized—then the counsel is compelled to argue that on any day the Legislature of the State may take away the franchise and existence of the defendant.

Thus a continuous line of road, of uniform gauge, traversing several States and Territories, instituted and established by the United States as a national highway, and post road and telegraph line, and a military and naval road in time of war, subject always as to rules of fare and freight to the United States, indebted, as the Central Pacific—a like organization in all substantial respects—is, to the United States in vast sums of money payable out of long future earnings and services, and chartered by the United States to continue perpetually, has, we are told now, only a precarious existence, dependent on the will and pleasure of the Legislature of one distant State, among the most meager in population of all the States.

Can your honors accept such a conclusion? You must accept it as the inevitable logic on which this assessment stands.

The Constitution of California does not flinch from the argument. One of its articles ordains that the Legislature may create a commission armed with rigorous, nay, absolute visitatorial powers, authorized to cut down *ad libitum* the fares and freights of these national roads, and fix them when and as they please. The Legislature has proceeded under this license.

There is the expression of the twin power; this claim of control, together with the claim of the right to tax, makes up the dual pretension of absolute State sovereignty.

Put the two powers together, and you have the united power to despoil and to starve—the power to forbid earnings, and to strip the corporation of property already acquired.

Does such power endanger the occupation and business of these beings? Can it be used to destroy, “impede, delay, or prevent the said company from performing its obligations to the United States?”

Is this the lame and impotent conclusion of a great passage in the legislative, political, and material history of the country—a passage which recounts the masterful achievement of constructing iron ways, for vast trains carrying armies, munitions of war, peoples, and merchandise, traversing trackless deserts and measureless mountains, to a distant sea?

Is this the ignominious destiny of an achievement which summoned to its aid the highest statesmanship and enterprise of our time?

Thompson vs. Railroad (19 Wallace, 579); Railroad Co. vs. Peniston (18 Wallace, 5) do not countenance the doctrine now advanced against us.

There the tax was not on *franchise* or *faculty*; it was only on *tangible property, segregated from the franchise*.

In the latter case, the Court says the liability to taxation does not hinge on the question whether the agency or instrumentality was or was not originally created by the United States. However created, if adopted by the United States as an instrument of governmental powers, its faculties and existence cannot be taxed by a State. In the former case, the Court says:

"Taxation of the agency is taxation of the means; taxation of the property of the agent is not always or generally taxation of the means."

The same distinction is reaffirmed in the case of *Western U. Tel. Co. vs. Texas*, already referred to.

I conclude by submitting the positions we hold touching the two questions with which I began.

First—The provisions of California's Constitution and the proceedings under them, do deprive the defendant and its shareholders of property "without due process of law," and do "deny them the equal protection of the laws."

Second—A State may not tax a Federal agency, its faculties, trade, and occupation, its right to be and to act. Whatever may be the power of a State to tax the "tangible property" of the defendant, the *franchise* acquired from the United States is beyond State control.

Argument of Mr. George F. Edmunds, of Counsel for Defendant in Error.

MR. EDMUNDS said: In the little I have to say, may it please your honors, I shall not follow the particular order of my brief, but, in the short time I have, allude to some of the leading topics drawn in question, as they may happen to occur, and I begin where my learned brother (Attorney-General Hart) left off, as freshest in the minds of the Court as to the scope and effect of this Illinois case of *Ducat* and the other case referred to about the foreign corporations. Your honors have held (and I think you can still hold, under the fourteenth amendment of the Constitution of the United States, if that really means anything at all, which seems to begin to be doubtful in the minds of counsel), that a State has a right to regulate the terms upon which it will permit a foreign corporation to carry on its functions of insuring, or whatever it may be, in a State, and that, as a ground of permitting it to do so, it may say that it shall pay all its income into the Treasury of the State, or do or submit to any other thing. Such a corporation would, of course, be an eleemosynary one, as the only object in going into business under such requirements would be for the benefit of the State; and I think it only necessary to state what appears to my humble comprehension as the obvious distinction between dealing with property *as* property, whoever may own it, within the State, and dealing with the exercise of corporate powers and faculties of the corporation of one State when they undertake to exert those powers and faculties in another State, which the State of their creation has no power to give them, or any qualified right to do, and which depend entirely on the policy of the State where they are to be practically a corporation without incorporation by its Legislature. I think I can dismiss that with this simple observation.

Now, I will speak for one moment about what is necessary, if anything is necessary in taxation, in the way of notice. My learned brothers have insisted that your honors have decided over and over again, but particu-

larly in the case of *McMillen*, reading one single line out of the opinion of Mr. Justice Miller, and in the *Illinois Tax Cases*, reading two or three lines, that, whether under State Constitutions or the National Constitution, it is entirely competent for the sovereign authority, whatever that may be, to levy a tax upon any part of its citizens, one or more, or all, and collect it and pay it into the Treasury without giving that citizen any opportunity to contest the question of the constitutional validity of that tax or the constitutional or lawful regularity of the proceeding, in order to give equality of burdens and valuation, and so forth. I deny the assertion. I have studied with such care as I might the opinions of Mr. Justice Miller in these cases, and of which I am bound to say, if the Court will permit me, and with the modesty that becomes a member of the bar, that I entirely agree with him. You decided in the case of *McMillen* that it was competent for the State of Louisiana to impose a license tax upon innkeepers, merchants, etc., as a license tax. The statute did not provide that the person to be taxed should be called before any Board to try in advance the question whether he was that description of person at all; and the tax having been imposed and he having refused to pay it, the Tax Collector, in the ordinary execution of the provisions of law that exist everywhere for the collection of taxes, in a summary way proceeded to levy upon his property: and he brought a suit and insisted that he had no opportunity to try the question before the assessing officer, the executor of the law, as to whether he was a grocery man or a rum seller, or whatever it was in that case, and that he was thus deprived of his property without "due process of law." But the Court said he was not entitled to any notice; that the tax could be imposed upon such occupations, and that if he were that description of person, the law had said that he should pay that kind of a tax. Now, if he were that description of person, if he had all the notice in the world, he could not have changed the result; he could not have got the taxing officer to reduce his license fee from \$10 to \$5, because the law said that if he were an innkeeper, etc., he must pay \$10. The real point was, and that is the only point you have decided, that he was not entitled to be informed in advance, and have a right to go before the assessor and prove that he was not that description of person. If he was that description of person, the law fixed how much he should pay, and everybody else like him. Suppose he was not, and he had brought the same suit (I will not say that your honors would have jurisdiction of it), but suppose he was not an innkeeper, etc., and brought a suit when the collector of taxes levied upon his property, it would be an easy case to decide; that the legislative power had given no authority to its taxing officers to tax him at all; he was not that description of person, and so they had no jurisdiction.

When you come to the other class of cases in Illinois it is equally easy to agree to the whole doctrine of the Court in the cases, and leave it to stand where, with entire confidence we believe it does. The statutes of Illinois did not undertake to make any distinction in regard to the amount of tax or deduction in respect to property of any kind of given values. They did not undertake to say that the property of the railroads involved in that controversy should be taxed at a greater valuation, or without deductions allowed as to other values, or at a greater rate (for that is exactly the same thing) than the property of other citizens. They undertook to say no such thing. The system of taxation that the State of Illinois adopted when it looked to property as property, provided for absolute equality according to value. When it touched faculty as faculty, the exertion of corporate powers or of individual powers, or occupations, if you please, as occupations and faculties, it provided for equality as to them; and so my learned friends

have attempted to torture the suitable and appropriate language of one of the Judges of this Court in pronouncing the opinion addressed to the case (and it is usually supposed that an opinion is better addressed to the case in hand than to any other possible case that may arise) into the authority of a decision of this Court, that where the taxing officer is called upon by the law to exert the faculty of judgment, and is to hear, try, and determine something that the citizen has an interest in, that the citizen in such proceeding is entitled to no notice. That is an entire misapprehension of every one of these opinions; no such opinion exists. But I do not feel justified in enlarging upon that topic. I think it enough to call your honor's attention exactly to what these cases were, and to the entire distinction between that sort of thing and this.

Now I will come, if your honors please, to consider (and it seems to be important to do so from the stress which has been laid upon it) whether the fourteenth amendment of the Constitution of the United States was really designed to make the Constitution of the United States, and so relatively and reciprocally to make the Constitutions and powers of the several States, something different to what they were before. If, as the effect of my learned friend's argument is, the fourteenth amendment to the Constitution of the United States left the relations of the States to the National Government and their powers, precisely where they were before, then it would seem to have been somewhat idle and inofficious, as the will-makers would say, to make any fourteenth amendment to the Constitution at all. I have always labored under the impression (I may be mistaken) that when a nation composed of States as this is, and composed of people as this is, through great trouble and infinite discussion endeavors to make an amendment to its fundamental law, that it is presumed to have intended to make that fundamental law something more or something less, or different to what the fundamental law was before. I think we can assume that. If I am right about that, then we are bound to suppose that the fourteenth amendment of the Constitution does have an effective purpose according to the fair and plain meaning of its language. If, by force of it, as an honest eye reads it, a State is forbidden to do what a State before might have done, so be it. If, by force of it, a State is permitted to do what before it might not have done, so be it. But my learned friends say the tumult, the exigency, the infinite stress of affairs that led to the adoption of the fourteenth amendment, was the setting free of four million people who had not been considered by the law as citizens, scarcely as persons at all, and to protect them; and therefore the Constitution must be read in the light of saying all the time that this applies solely to the rights of people of the African race who, before that time, had been in slavery. What sort of logic is that? What sort of statesmanship would it have been for the makers of this fundamental law? The fact is true that what led, chiefly, to this thing was the result of this great struggle. What led to the adoption of Magna Charta, if I may use the word adoption (which is not exactly appropriate), was not the denial of equal rights by the Crown and his Court and his star chamber to the simple subject. By no means. It was the fact that the great lords and barons had found that the claims upon them for feudatory and other services were in excess of what they thought the ancient habits of the kingdom had been, and they resisted and resented, and they compelled the king to grant this charter. And the English historians tell us (all undoubtedly familiar to your honors) that that being, as this was in our case, the great leading and sole moving cause to these provisions that are embodied in the Magna Charta—purely the question between the barons and the king in regard to their relations—

the barons thought it wise, in order to get the common people to stand by them in the struggle that they thought they might have with the king, to put in a few words with regard to common rights; that justice should not be sold or delayed, and that no man should be deprived of his life, liberty, or property, without due process of law. But would my learned friends stand in the high court of Great Britain and say that it does not apply to the common subject; that it was the barons, who were aggrieved at that time, and who were making that warfare and endeavoring to accomplish these reforms, and therefore it is only the barons who shall not be deprived of life, liberty, and property, without due process of law? But here they claim it is only the colored men whom the protection of nationality is to be applied under this amendment.

It does not appear to me, if your honors please, that we need to take much time in discussing a question of that kind. There is nothing more familiar to us in the history of human affairs than that the simplest grievance applied to one man, of an outrage by legislative or executive power unduly and tyrannically exercised, is the moving and sole cause that leads the legislative power of that people to make a general law that shall not only secure cases of precisely that kind, but every other species of justice and equity that can possibly be imagined to be related to it. The infinite distress and woe to which the colored people were subject did not move the pity and attention of Congress because these people had black skins; it moved Congress because they were *men*, and, therefore, moving because they were men, it said that every man should have equal rights and due process of law, and that no State (as they might have done before, so far as the United States was concerned) should deprive them of that, and that you and Congress and the Executive, the sovereigns of national power, should have the authority to see that it was not done. That was the fourteenth amendment. And in addition to what my learned brother said yesterday, if your honors will take the published printed history (for what he read was official history, though not printed)—if you will take the two resolutions of the House of Representatives proposing these amendments to the Constitution—one No. 51, in the session of 1865-66, and the other, No. 127, which is now the fourteenth amendment—and see how the House of Representatives, day after day and time after time, struggled to use universal and comprehensive language, and having thought they had accomplished it, sent House Resolution No. 51 to the Senate, and how the Senate, day in and day out, by discussion, looking at every aspect of these affairs, finally failed to pass that altogether; and then how the House of Representatives, again beginning with the formulation of House Resolution No. 127, went through with it, as my learned friend has shown yesterday; and how, when it came to the Senate, amendment after amendment, proposition after proposition, covering the whole circle of possible contingencies and phraseologies, and all that, were publicly presented by Senators, and printed, and are in printed records you can get in a moment, you will not fail to know that this fourteenth amendment was intended to mean all that to the eye it appears to mean. There is no word in it that did not undergo the completest scrutiny. There is no word in it that was not scanned, and intended to mean the full and beneficial thing that it seems to mean. There was no discussion omitted; there was no conceivable posture of affairs to the people who had it in hand that by this broad and catholic provision for universal security, resting upon citizenship as it regarded political rights, and resting upon humanity as it regarded private rights, should not be made forever secure—secure, not according to the passion of Vermont, or Rhode Island, or of California,

depending upon their local tribunals for its efficient exercise--but secure as the right of a Roman was secure, in every province and in every place, and secure by the judicial power, the legislative power, and the executive power of the whole body of the States and the whole body of the people.

Therefore I say with some confidence, that we are not to escape meeting this question by endeavoring to squeeze out of this fourteenth amendment its life and its spirit, and its letter too, and to say that it shall be applied to one class or race or character of people or persons or of property, but that it stands and means the same to all, to be vindicated here, that it would stand and mean if it were in the State of Vermont and to be vindicated there by her tribunals.

Now let us suppose, then, that the provisions of this fourteenth amendment so far as they touch this matter of citizenship and private rights (I leave out the political part of it) were in the Constitution of the State of California; and suppose that the Legislature of the State of California, with that Constitution declaring that no man should be deprived of life, liberty, or property, without due process of law, and declaring that there should be no denial of the equal protection of the laws to any person within the jurisdiction of that State—the Legislature of the State of California meets and passes as a law a taxation scheme in precisely the language that the present Constitution of the State of California adopts in regard to this taxation—I should be glad, if I could, to put my learned brothers under a cross-examination; I should be glad to have them tell me if they think that such taxation under such a State Constitution could be supported, unless they can make out, as they have struggled to do (which is another question), that this taxation after all is not unequal. If it be not unequal we have nothing to say, that is the end of our case. But if it be unequal, as I will assume for the present consideration I am advancing, is it possible to conceive that a State Court anywhere, with these provisions in its Constitution, and with these provisions in the Constitution of the State of California in its law, would say that there was equal protection of the laws to each one of its citizens, residents, and inhabitants; that there was the “due process of law” not dependent on valuations; that some of its citizens are entitled to have notice, and others not, or if none of them have notice, that the arbitrary will of the taxing officers in one or two counties, or in equalizing Boards of the whole State, was to determine how much was to be paid as to each particular piece of property upon its value? Because in such case there would be no distinction between also saying that they might just as well, in plain terms, be given the authority to say what each person should pay by name. If he pays by property, the value of the property being the basis, and he has no opportunity to be heard anywhere in regard to whether the valuation they are putting upon it is a just and true one, and the decision of that question is to be left to their quasi judicial determination and is to be a final one, then he cannot ever be heard. He cannot contest it in a Court, because, when it is presented to the Court and it is shown (as it is in some of these cases) that your honors have decided where the valuation was really unequal, that the man had the opportunity to be heard, you cannot help it; that the judgment of the taxing officers for such purpose is final and conclusive; the Court cannot review it. If the statutes of Vermont say that all horses in the State of Vermont shall be put in at their actual value (as they do), and the Assessors say my horse is worth only \$100 and the horse of my neighbor is worth \$10,000, there is no resisting the payment of that tax, and when you appeal to the Supreme Court of the State of Vermont they say the law has created a tribunal which was authorized to adjudge the

value of these horses, and the law of Vermont provides that in arranging the value of these horses you and your neighbor shall have a right to present your views and arguments in order that there may be a true and relative value ascertained, and, so, equal rights. If these taxing officers have failed in their duty and have made a mistake, we cannot help it, that is clear enough.

Now, when you apply this to the State of California, here is a taxation upon value. It is not a taxation like the Louisiana case on the faculty of being a saloon keeper, or a rum seller, or the faculty of being a railroad. But the Constitution says that everything shall be taxed upon value. It is then said that this State Board of Equalization shall fix this value. It makes no provision as a Constitution (and naturally might not—a detailed provision) for giving any opportunity in any such proceedings for the owner of that property to be heard—of that particular kind of property—as to its value. Now, your honors have never yet decided such a case. With all respect to my learned friend, when I asked where that case was, he was so much pressed for time—I do not mean that he did not think there was such a case, far from it; but I have searched a good deal, and I have never found such a case as that. So that I insist upon it, may it please your honors, a provision of the Constitution of the State of California, as it stands, which declares that its taxing officers may assess values without any notice or opportunity for the owner of that property to be heard, is not a bit better than if the Constitution or the law of California had said that they might assess persons—I do not mean per head even—but might assess persons just such sums, man by man, and name by name, as they should think is fit to impose according to their judgment of what the persons had better pay. Of course, that is only a statement of the proposition the other way. Would anybody stand up and maintain that such a proposition could be upheld? I do not believe he would; and yet that is exactly this thing.

Now, let me take up another topic, because I am sorry (although I presume your honors are not) that the convenience of your honors and your other duties did not allow you to give us all the time that reasonably and fairly we might have thought it desirable—

ATTORNEY-GENERAL HART here handed Mr. Edmunds the authority he had previously referred to, which Mr. Edmunds read as follows: "It has been said that the power of taxation for the purposes of the commonwealth is a part of all governmental sovereignty, and is inseparable from it. It is for the Legislature to decide what persons and property shall be reached by the exercise of this function, and in what proportions and by what process and instrumentalities taxes shall be assessed and collected. The authority extends over all persons and property within the sphere of its territorial jurisdiction. When called into activity there can be no limit to the degree of its exercise except what is found in the wisdom of the law-making power, and the operation of those conservative principles which lie at the foundation of all free government." *St. Louis vs. Ferry Co.*, 11 Wall., 429.

ATTORNEY-GENERAL HART: That is the proposition I advanced.

MR. EDMUNDS: Then I certainly misunderstood you. I give everything that is said there my respectful, but, as my time is limited, my brief adhesion.

Now, let us come to another topic, whether taxation is one of these faculties and functions of a sovereign State that is to be expected out of the other prohibitions against tyranny and injustice, of the Constitution of the United States. That is very stoutly contended for by our learned friends,

so that they would make the Constitution read that "no person shall be deprived of his property without due process of law except it be under the form of taxation;" and that "no person shall be denied the equal protection of the law except it be under the form of taxation." That would be a charming spectacle to present to a civilized people, would it not? And do not my learned brothers know (I know they know, for all history is open before them) that nine tenths of the tyrannies which have produced revolutions and seditions and discontents and overthrown Governments in the history of the world have been the tyrannies of taxation in some form? And yet in the nineteenth century they would have you read this apparently unmistakable language of the Constitution of the United States (if it has anything at all to do with the matter), and say that by implication, not by language, it excepts and leaves to the States the power to exercise tyranny without due process of law as to taxation, and the power to exercise tyranny in spite of equal protection of the laws as to taxation. I do not think it does it, may it please your honors.

My friend has said, with great stress and with great truth, that taxation is a sovereign power. I agree to that. Every power of a State, of a government of every kind, is a sovereign power. It is impossible to conceive the idea of a State, in its widest or its narrowest sense, without imputing to it sovereign power. That is what a State is, and it is the only quality, if you go back to the very bottom of it, that makes a State; it is the foundation and expression of sovereign power. He did not get away, therefore, from the question, by saying that taxation cannot be made equal by national restriction upon State rights with the consent of the States (as, of course, this thing is by the consent of the States, whatever it means), because taxation is a sovereign power. The administration of justice is a sovereign power, too, without which taxation could not be carried on at all; without which taxes could not be collected; without which they could not be enforced. The administration of justice is a sovereign power in respect of every right, of every being that may have access to the Courts at all, and it is an essential and the first attribute of sovereignty to administer justice. And yet the old Constitution of the United States denied to the States of this Union the power to administer justice in certain cases. They cannot touch an ambassador, a minister, or a consul. That is reserved for the National Government. They cannot violate the obligations of a contract; they cannot emit bills of credit, and so on and so on; I need not waste my time to go over the enumeration.

Where, then, do we find ourselves in considering this attempt to persuade your honors that whatever else the Constitution of the United States may mean, as it is found in these condensed and crystallized words of denial and prohibition—that whatever else it may mean, it does not mean to relieve either race, or sex, or age, or nativity, or occupation from tyranny in regard to the exactions that the State may impose upon the persons or the property of its people to be turned into what may be supposed to be the common treasury. And your honors must state it, if you say that this judgment is to be reversed upon the ground that taxation is not touched by them, although all other rights are.

A tax, my learned friends say, as in this case, is a proceeding *in rem*, and, therefore, although the Constitution of the United States commands that no State shall deprive any person of life, liberty, or property without due process of law, or deny to any person the equal protection of laws, it may still proceed as *in rem* upon the corpus, the property, and do what it likes. Would my good friends have the kindness to tell your honors what exactly they mean by such a proposition as that?

ATTORNEY-GENERAL HART: We never made it. We said that, so far as property was concerned, the right of taxation and right of assessment was the same; and it being a tax upon the property there is no inequality.

MR. EDMUNDS: That is another of the sweet paraphrases that come around to the same proposition. What is property, I should like to know? That book [indicating a book from the library] is property, because the United States, a sovereign power within certain limits, has dominion over it—legitimate dominion. You separate that dominion from that book, and do not transfer that dominion to somebody else, and it is not property; it is a thing only, having no relation to anything else, excepting in the natural order that paper is a thing that may have relation to the fiber out of which it is made, and so on. Therefore, I say it is impossible to conceive of the idea of property without you conceive in the same moment of time, and inseparable from it, the idea of some being we recognize as existing in this world, either natural or artificial, which has dominion over it. That is all there is in property. Therefore, the notion of my friend's endeavoring to separate this inequality from the person who has to pay his \$2,000 or \$3,000 a mile, or \$2,000 or \$3,000 a hundred acres on his land, more than his neighbor does—the idea that you are going to maintain that on the ground that the tax laws look to the thing and not to the man who owns it, appears to me will hardly bear very thorough investigation. It is because this is property that these people are now endeavoring before you to protect it; it is because it is property that we invoke the Constitution of the United States against the Constitution of the State of California, which is taking it away from us against the provisions of the Constitution. If it had not been our property, and had not the whole question been how it operates upon the person who owns property, there would have been no occasion for us to trouble this or any other Court. I think we may dismiss that.

Now, I come to say only a word as to classification—for my learned brother, Mr. Sanderson, is so much more familiar with this thing than I am that I must give him all the time I may. Our friends say that this is merely a classification, and that the Courts have held that you may classify property. I admit it; I maintain it. But I say, bringing it down to the very last point on which they endeavor to hang, that this is a classification of property in two counties. I leave out now the question whether a railroad, because it is a railroad, is to be despoiled of its property, or whether it is a person; it is a classification of all kinds of railroad property that is in two counties, and that may be compelled to bear a heavier burden in the hands of its owners than railroad property in one county; not as a faculty or a function, bear in mind; not as income to be derived from it; not as the power to take tolls and operate, but as property, a thing of value, and in no other way. Very well; now, if you can make that classification as to a railroad, I would say for the purpose of this present point, you of course can classify as to private citizens in the same way, and the State of California, therefore, by its Constitution (supposing now that the fourteenth amendment is really in force in the United States and really means equality as it says), could say that any citizen who owned farming lands in two counties, so that these lands were contiguous just as the railroad land is, that any man who owned a farm in two counties, a line running through the middle of it, should pay double taxes to the man who only owned one farm in one county. What do you think of that?

ATTORNEY-GENERAL HART: That is not our proposition; there is nothing like that in this case.

MR. EDMUNDS: You do not think that is so; neither do I. Now, we have

a railroad. Supposing this railroad had a farm, as I suppose it might, for Congress has given it a good deal of land and it might better be devoted to farming probably than anything else—supposing a railroad, bank, insurance company, or church corporation, has a piece of land that extends across the border line of the county, as I suppose very many people have there (in my State I know many people who have it), can the Legislature of the State of California, or its Constitution, or any other power in that State, say that the property, as property of any one of these people which lies across the border line of these two counties, should pay double, and all the property in the rest of this county should pay a single rate of taxation? My friend could not claim that. But if it is a railroad, not a franchise, exerted over greater lengths of line, etc., but the value of the land, and the iron, and the ties, as a thing to be estimated, it is to be doubly taxed if it crosses the line of a county. My friend, of course, would be obliged to establish that, maintain that, or otherwise I would be obliged to stop at once, as having no adversary.

ATTORNEY-GENERAL HART: No, we do not.

MR. EDMUNDS: Then my mission is about accomplished; that is exactly what this is. The Constitution of the State of California declares, as it regards the point under consideration, that the property of every one in that State shall be taxed as property and on its value. Then it makes the exception; the property of a railroad which is operated in more than one county shall be taxed at double its value. Of course it does not say "double," but anything that is unequal. I use the word "double" to make my phrase as short as possible. How does that stand? That is what it says. And I repeat, because here is the whole distinction between the great class of cases that my friends have cited, and to every one of which I fully agree, when you apply the language of the opinion to the case the Court had before it. But you can find no case anywhere where the taxing power has undertaken to exert itself unequally upon the value of things, and has successfully undertaken it; and very few where they have undertaken it at all, and none where they have successfully undertaken to put a different rate or summation of value on these things as respect localities.

It is perfectly true that purely local taxation in some way may be unequal as to locality. A city or town may tax a piece of property four or five times as much as like property is taxed in another town or city. That is plain enough; everybody admits that, and admits it constantly. That is done with due process of law and consistently with equal rights. So that if I am right in supposing that there is a Constitution in the State of California which provides that railroad property operated in more than one county shall bear a heavier tax than railroad property or any other property in one county; if I am right in supposing that that is the case here, then it would seem that my learned brothers and I do not disagree in thinking that it cannot be upheld. Assuming that this is a case of Federal jurisdiction, and that is where we are, I repeat (and your honors will excuse me for it, for to my mind it clears the whole question) that the fault into which my learned brother has fallen in discussing this case, is that he did not attend to the distinction, which is plain on the face of this Constitution, and the laws in all these cases, between the taxation of franchises, of occupations, and of callings, upon grounds of equality, as to them; and the taxation of values, which is this case, upon grounds of equality as to them. This is on the face of it, in form, in effect, in substance, and consequence a taxation upon the value of a piece of property owned by a citizen of California. And the State of California has said

that because that citizen has associated with him other citizens under a corporate association (or for some other reason, I care not what), that that citizen as to the value of his property shall pay a greater and a different rate upon it than his fellow-citizen. That is the proposition.

If you can maintain that, you can maintain anything. If it is within the sovereign power of a State (supposing the fourteenth amendment applies to it at all, as I assume to be proved) to make a differential rate upon values as values, on account of the nature of property, then all the security under every State Constitution, as it is in Vermont and almost every other State Constitution now, that taxation must be equal, is entirely gone. Because, if you once concede the point that you may classify different rates upon the values of things, or may put up your values on different principles, as values by deductions or otherwise—which is the same thing stated in another way—then there is no check upon the exercise of arbitrary power. The mob or commune that can get possession of the State Legislature for one term may despoil every one of the citizens whom it chooses to despoil, and the liberty and the security of the Constitution of the United States, secured through painful exertion and great consideration, crystallized in unmistakable language—historic indeed, and beneficent as it is historic, securing national intrinsic rights everywhere and to everybody—will turn out to be an utter sham and delusion.

I should have been glad if your honors had given time to discuss some of the other topics of the case, but I must leave them to the better discussion of my brother Sanderson.

Arguments of S. W. Sanderson, Esq., Counsel for Defendant.

MR. SANDERSON said:

May it please the Court, before commencing my argument, I desire to make one or two observations in relation to certain misconceptions of counsel in the very able and forcible arguments which have been made upon the other side. Counsel have put us in the position of maintaining propositions which we do not maintain. We have been misunderstood or misrepresented. It has been assumed upon the other side, first, that we maintain the proposition that this question of "due process of law" imports into the taxing system of the State judicial proceedings or methods in the matter of making assessments or ascertaining the value of property for the purposes of taxation. We maintain no such doctrine. On the contrary, we admit that "due process of law" does not require a resort to judicial proceedings in the matter of assessments; that taxes may be levied and collected in a summary manner by administrative Boards and officers without the intervention of any of those proceedings which are appropriate, and which in the administration of justice are generally employed by the Courts. All we claim on that head is this: that at some stage of the proceedings, between the commencement and the time at which the assessment becomes final, the taxpayer shall have notice, or an opportunity to be heard as to the value of his property, before the Assessor, or before some other officer or Board appointed by law.

Again, we have been placed in the position of claiming that it is an indispensable feature in tax laws that a Board of Equalization should be provided, before which taxpayers may go for the purpose of having their assessments as made by the Assessor reviewed. We have contended for no such proposition. Our position on that head is this: that if the State creates a Board of Equalization for a portion of its taxpayers, and enables

them to have a review before such Board of the action of the Assessor, then we say it is the duty of the State also to furnish a Board of Equalization for all other taxpayers.

It is also stated upon the other side that we claim that the fourteenth amendment to the Federal Constitution prohibits the States from passing any laws, except such as shall act equally and uniformly upon all persons and upon all things in the State. We make no such claim. Our position upon that point is, that the fourteenth amendment requires that State legislation shall operate equally and uniformly upon all persons and upon all things upon which it is designed to operate at all; that is to say, upon all persons and all things which stand in the same category, or stand in the same relation to the law.

For example, a law in relations to bishops, and affecting bishops only, is a general law; and if it operates upon bishops only, and yet operates equally upon them all, there can be no objection to it on the score of validity. We only hold in this respect, that tax laws shall operate equally and uniformly upon the property which is taxed, and upon the owners of such property; not that they shall operate universally upon all persons or upon all kinds of property. We do not claim that it is not within the power of the States to select certain kinds or classes of property for taxation, and exempt from taxation all other property. All we claim is that when a State has selected property for the purpose of taxation, it must employ the same system, mode, and method in ascertaining the value of all such property, and must impose upon all of it, without discrimination, the same burden or rate of taxation. This much in explanation of the propositions for which we contend.

May it please the Court, there is a preliminary question presented by the record in this case which so far has not been considered by counsel, and to which it is necessary to call the attention of the Court for a few moments. The question is whether a certain apparent statute of the State of California is law or is not law. If your honors will turn to page 12 of my brief, you will find there quoted Section 3664 of the Political Code of the State of California. On page 14, a little below the middle of the page, you will find a bracket, the next word being "respectively." The validity of the remainder of that section, from the bracket on, is challenged by us. The history of this bill is this: In 1880 the Legislature passed an Act—

THE CHIEF JUSTICE: Is all before that bracket good and valid?

MR. SANDERSON: Yes, sir.

THE CHIEF JUSTICE: It is only this part after the bracket that has been disputed?

MR. SANDERSON: Yes, sir. It may seem strange that we should question the validity of a portion of the Act and not the whole, for it would seem that if a portion of the Act was invalid the whole would be; that I am about to explain. In 1880 an Act was passed amending certain enumerated sections of the Political Code and adding two new sections. The Constitution of California requires that the title to a bill shall state the subject; that the bill shall have but one object, and that such object shall be expressed in its title. Now, it did not appear clearly in the title to this bill to what subject these two new sections related, nor to what Code they were to be added, and therefore it was considered doubtful whether the title of the bill satisfied the calls of the Constitution in that respect. The question was mooted whether this legislation was valid legislation or not; and hence, at the next session of the Legislature, it was proposed to amend the title of the Act so as to make it conform to the requirements of the Constitution. A bill was introduced in the Assembly—a verbatim copy of the Act of

1880, with the exception of the title—which was amended so as to express the subject of these two new sections and the Code to which they were to be annexed. It passed the Assembly in that form and was transmitted to the Senate. The Senate amended Section 3664 by adding that portion of the section which, in my brief, is inclosed in brackets. It was then returned to the Assembly for their concurrence. Upon a call of the ayes and noes, it received only forty votes in the affirmative, but the Speaker declared that it was carried.

Now, your honors will see that the first part of the bill of 1881 consists of previous legislation. After the passage of the bill of 1881, the Supreme Court held that there was no defect in the title to the bill of 1880, and therefore that such previous legislation was valid.

THE CHIEF JUSTICE: Did the Governor approve the original bill?

MR. SANDERSON: Yes, sir; he approved the original and also approved this. But if this whole bill be regarded as unconstitutional, still the old law has been decided to be constitutional by the Supreme Court, and it is therefore only the validity of that portion included in brackets which comes to this Court for consideration.

The Constitution of the State of California requires that every bill before it shall become a law, shall be read three times, shall be passed upon a call of the ayes and noes, and shall not become a law unless it receives a concurrence of a majority of all the members elected to each house. The Constitution fixes the number of members of the Senate at forty, and the number of members of the Assembly at eighty. Therefore, in order to pass a bill through the Assembly, it is necessary that it should receive the concurrence of forty-one members, if eighty members have been elected. The Journals and statutes show that the Assembly was full; that there were eighty members. The certified copy, which I have introduced, of the written Journal shows that the measure received only forty votes, being one less than a constitutional majority.

THE CHIEF JUSTICE: What was the extract which you have put into your original brief taken from?

MR. SANDERSON: That was taken from the printed Journal.

THE CHIEF JUSTICE: And your claim now is that the printed Journal differed from the written Journal?

MR. SANDERSON: Yes; the printed Journal differed in this: the count, as given in both the printed and written Journal, is thirty-nine, and is erroneous. A count of the *names* in the printed Journal shows forty-one, which is enough to pass the bill. In the written Journal a count of the names shows forty. That is one more than the count, as there stated, shows, but not enough to pass the bill.

MR. JUSTICE GRAY: Is there any provision in the Constitution as to reviewing that matter by the Courts, or any decision by the Supreme Court as to how far that is matter of judicial investigation?

MR. SANDERSON: There has been no decision by the Court on that subject. Our Constitution is young yet, and this question has not been before them, or at least has not been decided, so far as I am advised.

MR. JUSTICE GRAY: And there was no such provision in your former Constitution?

MR. SANDERSON: There was no such provision in the old Constitution. The new Constitution and the Codes provide that Journals shall be kept of the proceedings of the Legislature, in which shall be entered minutes of transactions as they occur, and that they shall be read each morning by the Secretary, and approved and signed by the presiding officers—the Speaker of the Assembly or the President of the Senate, as the case may

be. The Code of Civil Procedure provides that these Journals shall be competent evidence to prove the transactions of the Legislature. They are evidence of a better character and of a higher grade than the printed statutes. Therefore, there can be no question but what the Constitution and the legislation of the State of California in relation to this subject was intended to provide additional safeguards in respect to the passage of bills which had not be provided in the old Constitution. The history of legislative bodies in this country shows that bad measures sometimes become laws through vicious practices and methods. Measures have been allowed to pass by the mere vote of a majority of a quorum. Hence, to obviate this mischief, real or supposed, these provisions of the new Constitution were inserted; and the only question is, can the Courts go behind the printed statutes and behind the enrolled bills deposited in the office of the Secretary of State, for the purpose of ascertaining whether a law has been enacted in the manner and by the vote required by the Constitution? There is no question about the fact that a bill which does not receive the constitutional majority cannot become a law. The only question is, may you look into the Journals for the purpose of ascertaining what did and what did not become a law?

I will not spend any time on that question. This provision of our Constitution was borrowed from the Constitution of the State of Illinois. The decisions in that State are numerous and conclusively with us on that subject. They are cited in my brief. There are also two decisions by this Court to the same effect—both, I think, by Mr. Justice Miller—in which he holds, substantially, that it is the duty of the Courts to find and declare the common law, and that it is no less their duty to find and declare the written or statutory law. Therefore, it is their duty, in investigating that question, to examine all competent testimony—made so by legislation—for the purpose of ascertaining and determining whether a law has passed a legislative body in conformity with constitutional requirements. These cases are also cited in my brief. It has been held everywhere—where similar provisions exist—that this may be done. The authorities cited upon the other side, from the State of California, were rendered under the old Constitution, which, as already stated, contained no provisions similar to those which are found in the new Constitution. Those authorities are, therefore, not in point. It has been held in States where such constitutional provisions do not exist, that you cannot go behind the enrolled bills; but where these provisions do exist, it has been universally held that you may go behind the enrolled bills and read the Journals.

MR. JUSTICE BRADLEY: You are aware of the case in New Jersey, I suppose?

MR. SANDERSON: I do not remember the case.

MR. JUSTICE BRADLEY: I contended very strenuously, as you do, that the Journal should decide the case, but the Court of Appeals reversed me.

MR. SANDERSON: Are there any such constitutional provisions in New Jersey as we have here?

MR. JUSTICE BRADLEY: Exactly the same.

MR. SANDERSON: Then I think your honor was right, and the Court of Appeals was wrong. The question as to the validity of this part of Section 3664 becomes important when you come to consider the question whether the taxing system of the State of California affords the defendant an opportunity to be heard at some stage of the proceedings, because it is in that portion of Section 3664 that the proceedings are authorized upon which the other side, in the Court below, chiefly relied for the purpose of showing that an opportunity to be heard is given.

It is claimed by the counsel upon the other side that we are not within the guaranties of the fourteenth amendment, first, because we are not a "person;" second, because we are not a colored person; and third, because the laws of which we complain are not the laws referred to in that amendment.

The proposition, may it please the Court, that corporations are not included in the word "person," as used in that amendment, is at least a startling one. I have been to the trouble of collecting some facts in relation to the number of corporations in the country and the amount and value of their assets or property. Of course it was a difficult matter to ascertain fully and with entire satisfaction, but from the returns which I was able to reach, I found that the insurance companies of this country number not less than sixteen hundred, and that their aggregate assets are not less than \$99,000,000. There are more than five thousand mining corporations, the value of whose claims and other property it is impossible to state.

There are more than two thousand national banks, with assets valued at more than \$2,000,000,000. There are doubtless a large number of other bank corporations which are not national, and whose assets, or their value, I have no means of ascertaining.

There are in the United States and Territories not less than fifteen hundred railroad corporations, operating not less than one hundred and ten thousand miles of railroads, with property and assets of not less than \$6,000,000,000.

In addition to these business and trading corporations, there are scattered throughout the length and breadth of the country, in every town, village, and city, educational, religious, eleemosynary, and sanitary corporations without number, with property of a value which we have no means of knowing. Now, it may be that all these corporations and all these stockholders are without the protection of the fourteenth amendment; but, if it be so, there should be some surer foundation for such a conclusion than the emasculating construction of the word "person." If we look to the literature of the law, from time immemorial down to the present time, we find that corporations are spoken of and treated as legal persons. We find that Mr. Blackstone, in his work upon the "Rights of Persons," devotes a chapter to corporations, and states that persons are divided into classes—natural and artificial. That natural persons are such as God has made us, and artificial persons are such as the law has made them.

Chancellor Kent does the same. He gives a chapter to corporations in his work on the "Rights of Persons."

Nowhere has it ever been asserted that, in the matter of the acquisition, possession, and enjoyment of property, a corporation was not a person within the meaning of any law, notwithstanding the word "corporation" was not employed.

Very little attention has been paid, if the Court please, to the authorities upon this subject. I desire to refer your honors to some of the authorities upon the question, which, I think, are conclusive. In the time of Henry the Eighth, a statute was passed which imposed the burden of building and repairing bridges upon the inhabitants of the town, city, or county in which they were situated. Lord Coke, in commenting on that statute, held that corporations were embraced within it, and that a corporation was, within the purview and meaning of that statute, an inhabitant of the town or county. Chief Justice Marshall had occasion to refer to this in the first case before this Court involving the question as to what is the legal status of a corporation. Before that, however, in *Rex vs. Gardner*, Chief Justice

Mansfield had decided that a corporation was an "occupier," within the meaning of a statute in regard to certain poor rates which were not assessed against the occupant of the land, because there was no occupant—the land belonging to a corporation. He (Mansfield) held that a corporation was an "occupier" within the meaning of that law. The comment of Coke and the decision of Mansfield came before this Court in the case of the *United States vs. Deveaux*, in 5 Cranch, 61. The question was whether a corporation was a citizen of the United States within the meaning of the constitutional provision which confers jurisdiction upon the Federal Courts over controversies between citizens of different States; and it was contended that a corporation could not be regarded, in any sense, as a citizen, and that this Court had no jurisdiction over a controversy between a corporation and the citizens of another State. Chief Justice Marshall, however, swept the cobweb from his path and looked behind the shadow at the substance, and there he found natural persons, though a corporation, having the rights of natural persons, which they were endeavoring to assert in their behalf; and he held that these persons were not to be deprived of their rights as citizens of the United States because they had organized themselves into a corporation, and that they were "persons" within the meaning of that clause of the Federal Constitution.

The same question came up again in the reverse form. An attempt was made to bring the Baltimore and Ohio Railroad Company into the Circuit Court of the United States, and that corporation pleaded to the jurisdiction of the Court upon the ground that it was not a person, but was a corporation, and, therefore, was not bound to answer in the Federal Courts. Mr. Justice Grier disposed of that question in a very summary manner. He said:

"A corporation, it is said, is an artificial person, a mere legal entity, invisible and intangible."

Then he goes on and argues the question upon that head, and he winds up with this language:

"But these important faculties, conferred on them by State legislation, for their own convenience, cannot be wielded to deprive others of acknowledged rights. It is not reasonable that those who deal with such persons should be deprived of a valuable privilege by a syllogism, or rather sophism, which deals subtly with words and names, without regard to things or persons they are used to represent."

It is a little singular, if true, that if a corporation, under the laws of England, can be "an inhabitant," "an occupier," can be a person, an individual, and an inhabitant under the laws of some of our own States, and cease to be either when we come to consider the question whether they are "persons" under the fourteenth amendment. If they are "persons" under one clause of this Constitution, they must be "persons," also, under other clauses of the Constitution, which deal with the same or cognate subjects. Wherever their rights are affected, wherever their property is affected, they are persons, as was held by Mr. Justice Story in the next case to which I shall refer. The case of the *United States vs. Amedy* (11 Wheaton, 392) was a criminal prosecution under a law which made it a felony for any person to destroy a vessel upon the high seas with the intent to injure the underwriter. The underwriter in that case was a corporation—the Boston Insurance Company. No mention was made in the statutes of a corporation. The language was: "Shall burn or destroy any ship or vessel, of which he is owner in part or in whole, or in anywise direct or procure the same to be done, with intent or design to prejudice any *person* or *persons* that hath underwritten or shall underwrite," etc.

The question was whether this Boston Insurance Company being a corporation was a "person" within the meaning of that statute. Mr. Justice Story, in delivering the opinion of the Court, among other things, said:

"If there had been any settled course of decision on this subject in criminal cases, we should certainly, in a prosecution of this nature, yield to such a construction of that Act, but there is no such course of decisions. The mischief intended to be reached by the statute is the same whether it respects private or corporate persons. That corporations are in law for civil purposes deemed persons is unquestionable."

Mark the last sentence—"That corporations are in law for civil purposes deemed persons is unquestionable." Take another case that occurred in those times when there was no difficulty in holding that a corporation was a person, when it had occasion to invoke the general principles of law for the purpose of protecting its property. We find in 8 Wheaton another case which arose under the treaty of peace between the United States and Great Britain, the sixth article of which provided: "That there should be no future confiscation made nor any prosecution commenced against any *person* or *persons* for or by reason of the part which *he* or *they* may have taken in the war, and that no person should, on that account, suffer any future loss or damage either in his person, liberty, or property."

The word "person" is used here and such pronouns as are employed in designating natural persons. The case showed that an English corporation before the war had owned land in the State of Vermont, that the State of Vermont had confiscated that land and granted it to the town of New Haven. The English corporation interposed, and sought the protection of this sixth article of the treaty, and its rights were contested upon the ground that it was not a "person" within the meaning of that treaty; that the treaty did not refer to corporations; that the word "person" was used in connection with pronouns which indicated a natural person, and could have no application, grammatically, to an artificial person. The Court rejected that kind of logic, and held that a corporation in England was a "person" within the meaning of that treaty, because the corporation was within the reason and philosophy of that portion of the treaty, in that it owned property, and the purpose of the treaty was to protect that property against confiscation; and that it stood, so far as the merits of the question were concerned, in precisely the same relation to the treaty in which a natural person stood, and was therefore entitled to the same consideration and protection.

The authorities upon this subject are so numerous that it seems like a waste of time to refer to them. I defy the gentlemen upon the other side to produce a single case in which it has been held that a corporation, in respect to the possession and enjoyment of its property, whenever it seeks to enforce its rights, or whenever the law seeks to impose upon it any burdens or obligations, is not regarded as a person, whether the word "corporation" occurs in the law or not.

Take the case of *The People vs. Utica Insurance Company* (15 Johnson, 508). There the Supreme Court of New York held that a statute restraining *any person* from doing certain acts applied as well to corporations or bodies politic, although not mentioned.

In the case of *The Planters' Bank vs. Andrews* (8 Porter, 404), it was held that a corporation was a person within the meaning of the attachment laws of Alabama, although corporations were not named.

In *The State vs. Nashville University* (4 Humphreys, 166), it was held that a corporation fell within the meaning of the word "person" in a stat-

ute which directed the Land Office to be opened for the reception of entries by all and every person or persons.

This Court, in the Sinking Fund Cases, has made no distinction between persons and corporations, but has placed them in the same category. Mr. Chief Justice Waite, in delivering the opinion of the Court in those cases, says:

"The United States cannot, any more than a State, interfere with private rights except for legitimate governmental purposes. They are not included within the constitutional prohibition, which prevents States from passing laws impairing the obligation of contracts; but, equally with the States, they are prohibited from depriving persons or *corporations* of property without due process of law."

In this clause, as to "due process of law," wherever it occurs, only the word "person" is used; the word "corporation" is not used. Nowhere in the books, nowhere in Magna Charta, nowhere in any State Constitution, nowhere in the Constitution of the United States, do you find the word "corporation" in the clause in relation to due process of law. And yet no one has ever pretended until now that it does not protect artificial as well as natural persons. The research of counsel upon the other side has failed to find a case in which any distinction has been made, in this respect, between corporations and natural persons. This failure is significant.

If the Court please, there are some authorities upon this question directly in point, some of which are opposed to the position which we take, and others in favor of it. And first on the list is a case decided in Louisiana, in the Circuit Court of the United States, by his honor Mr. Justice Woods. That was a case in which the City of New Orleans had, by ordinance, imposed a tax upon foreign insurance companies doing business in that city to double the amount of that which the ordinance imposed upon domestic insurance corporations. A corporation organized under the laws of the State of New York, engaged in the insurance business in New Orleans, contested the validity of that ordinance under the fourteenth amendment, claiming that it was a "person" within the meaning of that amendment; and that was the only question which was considered by the Court. Mr. Justice Woods, in delivering the opinion in that case, said, among other things:

"The word 'person' occurs three times in the first section, in the following connections: 'All *persons* born or naturalized in the United States;' * * * 'nor shall any State deprive any *person* of life, liberty, or property,' etc.; 'nor' shall any State 'deny to any *person* within its jurisdiction the equal protection of the laws.' The complainants claim that this last clause applies to corporations—artificial persons."

Now attend to the reasoning of the learned Judge:

"Only natural persons can be born or naturalized; only natural persons can be deprived of life or liberty; so that it is clear that artificial persons are excluded from the provisions of the first two clauses just quoted. If we adopt the construction claimed by complainants, we must hold that the word 'person,' where it occurs the third time in this section, has a wider and more comprehensive meaning than in the other clauses of the section where it occurs. This would be a construction for which we find no warrant in the rules of interpretation. The plain and evident meaning of the section is, that the persons to whom the equal protection of the law is secured, are persons born or naturalized or endowed with life and liberty, and consequently natural and not artificial persons."

Now, with all due respect to the learned Judge who delivered the opinion

in that case, I think his reasoning is subject to the criticism of Mr. Justice Grier in answering a similar objection in the case of the Baltimore and Ohio Railroad Company, where he said that persons were not to be deprived of their constitutional rights by a syllogism or sophism which deals cunningly with words to the disregard of names and things.

The reasoning of the learned Judge is this:

"Persons are born or naturalized, corporations are not born or naturalized, ergo corporations are not persons."

Now, this is a syllogism, and syllogistic reasoning is unsafe reasoning when we come to ascertain the meaning of the words contained in a statute or Constitution. It is as apt to lead to erroneous conclusions as a reference to grammatical rules for the same purpose, or even more so. Now let us test the virtue of this syllogism by applying it to a case with which we are all familiar. According to Moses' account of the matter, Adam and Eve were not born or naturalized; they were created. Vary the syllogism of the learned Judge, and apply it to their case. Corporations are not born or naturalized, but created; Adam and Eve were not born or naturalized, but created; therefore Adam and Eve were corporations. Such logic is not safe logic for the purpose of ascertaining the meaning of language as used in a statute or in a Constitution. The Judge says that corporations are not born. It is true that in a literal technical sense they are not, and yet in a legal and figurative sense they are. Bentham says: "Laws and property are born and must die together. Before there were laws there was no property; take away the laws and property ceases."

MR. JUSTICE BRADLEY: Do you contend that that first clause of the amendment relates to artificial persons?

MR. SANDERSON: I am not done with that language yet. The confusion, or whatever it may be called, thrown into this amendment in the first clause, is due to the fact that an amendment was tacked on to it which the committee did not report.

MR. JUSTICE BRADLEY: I thought you were arguing that, although the word person was used, it might to some extent be applied to corporations.

MR. SANDERSON: Yes, it may. If I understand your honor, I think that the construction of the word "person" that the learned Judge gives, where it occurs in the last two clauses, claiming that it is the same in meaning as the word "person" found in the first, is all wrong, for the reason that the word "person" used in the first clause is accompanied by the associate words "born or naturalized," which are a limitation upon the word "person" as there used, and confines its meaning to those who are born and who are naturalized; while the word "person" in the last two clauses is not associated with any qualifying words at all, but is used in its generic sense, and embraces all persons of all classes. The word "person" in the last two clauses is broader and more comprehensive than the word "person" contained in the first clause. As suggested by my associate, Mr. Edmunds, an examination of the Journal will show that this first clause in relation to citizenship was a political clause, which was not in the amendment at the time it was reported to the House, but was added in the Senate, and has no connection with and was not intended to have any control over the subsequent parts.

MR. JUSTICE BRADLEY: I understand there was a great controversy about citizenship—whether they belonged to the State or the United States.

MR. SANDERSON: Yes, sir; that question was considered by Mr. Justice Miller, in the Slaughter-house Cases.

MR. JUSTICE BRADLEY: And the amendment was intended to settle the question?

MR. EDMUNDS: Yes; but it was a political consideration that the Senate suggested to the House after the main body of private rights had been disposed of in the House of Representatives.

MR. SANDERSON: To continue my remarks upon the Louisiana case. The reasoning in that case interpolates words—adds words to the language of the fourteenth amendment which were not employed by the statesmen who framed it. According to the reasoning in that case, the first section—if the meaning attributed to it be fully expressed in words—would read thus:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside; * * * nor shall any State deprive any person (born or naturalized in the United States) of life, liberty, or property without due process of law; nor deny to any person (born or naturalized in the United States) within its jurisdiction the equal protection of the laws.”

To thus interpolate words is not sanctioned by any rule of construction. To thus interpolate words is to make laws and not to construe them. No Court can lawfully do this. *Jus dicere non jus dare* is the measure of judicial power. You may declare the law, but you cannot make it. Had Congress intended the meaning which the learned Judge has given to the word “person” they would have prefixed to it the word “such,” so that these clauses would have read as follows:

“Nor shall any State deprive any (such) person, etc.; nor deny to any (such) person,” etc.

And the fact that no such qualifying word or words were used conclusively shows that no such limitation upon the meaning of the word “person” was intended.

There are two other cases in which the same conclusion was reached. One was decided by the Supreme Court of California, and the other by a Judge of a Circuit Court of the State of Illinois. The former gave no reasons for the faith that was in them, but blindly followed the Louisiana case. The Illinois Judge adopted the reasoning, substantially, of Mr. Justice Woods.

In opposition to the doctrine announced in these cases there have been several decisions by the Federal Judges on the Pacific Coast, and by United States Circuit Judge Drummond, of Illinois, in which it has been held that corporations are as much entitled to protection under the fourteenth amendment as natural persons. These decisions are cited in my brief. I have no time for comment. There is also a case by the Supreme Court of Illinois, in which it is held that no distinction can be made between corporations and natural persons in the presence of constitutional guaranties. This case is not cited in my brief. It is reported in 76 Illinois Reports, at page 447. I trust your honors will read it.

These decisions we must presume were perfectly familiar to the statesmen who framed the fourteenth amendment. They were familiar with the fact that the word “person” included corporations, and if any layman in either House of Congress had moved to amend by adding the word “corporation” in addition to the word “person,” every lawyer in the House would have told him that it was entirely unnecessary. If he had moved to amend by adding “any other association, firm, copartnership, or joint stock company,” they would have told him that the word “person” in connection with civil rights always includes corporations and other legal associations. I think you can find no case in the books to the contrary. Suppose that certain negroes down in South Carolina, having acquired means sufficient, should conclude to build a theater or some other place of

amusement, and should build it. We all agree, I think, that the fourteenth amendment protects the negro against State action, if it does not the white man. Now, suppose that these persons, after having built their theater, should come to the conclusion that it would be advantageous for them to take on the form of a corporation for carrying on their business, and should organize themselves into a corporation, so that you would have in fact a colored corporation instead of colored natural persons; would such a corporation be within the protection of the fourteenth amendment? Could the State of South Carolina despoil them of their theater upon the ground that they were a corporation, while they could not be despoiled of their theater so long as they remained in their capacities as natural persons? It cannot be that a great constitutional provision of this character can be rendered inoperative simply by a change in the legal attitude which the parties may assume. If the Constitution would protect such property from State action, while its owners were individuals or natural persons, it must necessarily do the same thing when they take on the form of a corporation, or else this constitutional amendment fails to accomplish in part one of the great purposes which all concede was intended to be subserved by its adoption, namely: protection for the negro race.

A short time before this case came up in California an item appeared in the newspapers which illustrates the absurdity of holding that a corporation is not included within the word "person" as used in this amendment. A certain firm doing a large and extensive business, which they had been conducting for several years, concluded that it would be more convenient to organize themselves into a corporation to carry on precisely the same kind of business. They formed a corporation, and they published in the newspapers the fact that they had formed a corporation, and that the corporation would continue the business as before, and that the interest of each member would be the same in the corporation as it had been in the firm. Now, take that case. While they remained in their capacities as natural persons, no one pretends that they were not within the protection of the fourteenth amendment, if that amendment applies at all to white people. But the moment they laid aside their natural capacity and assumed that of a corporation, according to the logic of our friends upon the other side, they forfeited all their rights under the fourteenth amendment. Thereafter there was no restraint upon the State in respect to them, though prior to that time there had been. By this simple transmutation of private persons into a corporation, the meaning, force, and effect of this constitutional provision, if counsel upon the other side be correct, was entirely changed and reversed.

Another consideration, may it please the Court. Corporations are composed of natural persons. They pay in their money; the assets of the corporation are furnished by themselves. The whole property is contributed by themselves. The corporation is the mere representative or agent of its stockholders. During the life of the corporation its stockholders are entitled to share in its earnings, if there be any, in the way of dividends. Upon the dissolution of the corporation they are entitled to share in the surplus fund, after the payment of creditors, if there be any. Now, this interest which the stockholder has in the property, and assets of the corporation, is property. It has a commercial, exchangeable value. It is transferred from person to person by the transfer of certificates representing shares. It is property. If a man dies it descends to his personal representative for the purpose of administration, and if there be any left after administration it goes to his heirs; and it is in view of these legal conditions that the Courts hold that stockholders' bills may be entertained

for the purpose of protecting the stockholder against the mal-administration of the Directors. Is it to be presumed that property of this character was not intended to be protected by the clause in relation to due process of law as much as any other property belonging to a natural person? I, as a natural person, own certain species of property. The Federal Constitution protects that from the unjust legislation of the State. I also own an undivided interest in the assets of a corporation, which is also property. That property, the learned gentleman upon the other side informs us, the fourteenth amendment will not protect against confiscation on the part of the State. Can it be possible that the fourteenth amendment can be so construed as to lead to these contradictory and absurd results? Can it be that it was not intended to protect all kinds and descriptions of property belonging to natural persons, whether it be that which is under his own absolute control or that to which the title is invested in some third party as trustee to hold for his benefit? Can a mere difference in circumstances and condition between the first and second kinds of property referred to create a difference in rule in the constitutional law of the country? I most respectfully submit that it does not; and, therefore, for the purpose of carrying out the command and behest of the Federal Constitution, you are required to do what? The command is that no State shall deny to any person the equal protection of the laws; no State shall deprive any person of life, liberty, or property, except by due process of law—all property—any property which he holds in his own right, in his own name, or in the name of another; the word is “property,” the broad generic term which covers and includes everything which man may acquire, possess, and enjoy—all property. The language is, no State shall deprive any person of life, liberty, or property—that is to say, any property—except by due process of law.

Now, if that is what it means, then, in order to protect the interests of the stockholder in the assets of the corporation, you must protect the corporation. To accomplish the principal purpose you must subserve the minor. You cannot, because a man has deposited his property in the hands of another, hold it subject to confiscation by a State in the presence of such a provision of the Federal Constitution.

It is next said, may it please your honors, that this provision of the Federal Constitution does not apply to white men; that it was intended to apply only to the negro race. It is very clear, if we look back over the history of the past twenty years, that this country has done a great deal for the negro race. It has stricken the fetters from their ankles and their hands, and it has endowed them with a second manhood. It has made them free men; it has endowed them with the rights of citizenship, political and civil, and it has placed them on a par and equality with the white man. But that is none too much; we do not complain of that. We only say that something should now be done for the poor white man. We ask that he may be lifted up and put upon a level with the negro. We ask that this fourteenth amendment be so construed as to concede to the white man equal rights under the Constitution of the United States with the black man. Our claim is for universal equality before the law. We claim that we should have no privileged classes; that we should all stand, as regards the law, upon the same broad and level platform. And yet my friends upon the other side, by their construction of this amendment, would create a privileged class. They have demonstrated, if they have demonstrated anything, that the negro race of America is a privileged class; that it stands higher upon the plane of legal rights than the white man; that whenever his rights are invaded he finds a shield and a protection in the fourteenth

amendment to the Federal Constitution; but whenever a white man's rights are invaded, whenever he is outraged by unjust State legislation, we are told by the eloquent gentlemen on the other side that there is no shield for him to be found in the fourteenth amendment; that the white man is without protection in cases where the black man is protected; in other words, that the white man is not the equal of the black man. The construction which they put on these clauses of the fourteenth amendment leads us inevitably to that conclusion.

I have been to the trouble of gathering a few statistics upon this subject, for the purpose of illustrating what the consequence of this doctrine would be should it receive the sanction of this Court. On page 52 of my brief you will find some information which I have gathered from the census returns of 1870, and also from the census returns of 1880. In 1870 the negro population in Louisiana was three hundred and sixty-four thousand two hundred and ten, and the white population three hundred and sixty-two thousand and sixty-five; the excess of blacks over whites was over two thousand. In 1880 the black population of the same State was four hundred and eighty-three thousand seven hundred and ninety-four, and the white population four hundred and fifty-five thousand and seven; an excess of blacks over whites of twenty-eight thousand seven hundred and eighty-seven. In Mississippi the black population in 1870 was four hundred and forty-four thousand two hundred and one, while the white population was only three hundred and eighty-two thousand eight hundred and ninety-six, making an excess of blacks over whites of sixty-one thousand three hundred and five. In the same State in 1880 the black population was six hundred and fifty thousand three hundred and thirty-seven, and the white population four hundred and seventy-nine thousand three hundred and seventy-one; an excess of blacks over whites of one hundred and seventy thousand nine hundred and sixty-six. In the State of South Carolina the black population in 1870 numbered four hundred and fifteen thousand eight hundred and fourteen, while the white population in the same State was only two hundred and eighty-nine thousand six hundred and sixty-seven; an excess of blacks of one hundred and twenty-six thousand one hundred and forty-seven. In the same State in 1880 the black population numbered six hundred and four thousand two hundred and seventy-five, while the white population numbered only three hundred and ninety-one thousand two hundred and twenty-four; an excess of blacks of two hundred and thirteen thousand and fifty-one.

I refer, if the Court please, to these statistics for the purpose of giving point to my illustration, which I propose to present for the purpose of showing that this constitutional provision was not intended to be limited in its scope and provision to the negro race alone.

MR. JUSTICE MILLER: As we decided in the Slaughter-house Cases (although the argument was the other way), we say: "And so, if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent."

MR. SANDERSON: I am glad to know that, your honor.

MR. JUSTICE MILLER: I do not know that anybody in this Court—I have never heard it said in this Court or by any Judge of it—that these articles were supposed to be limited to the negro race.

MR. SANDERSON: But there is a notion out among the people, and our friends on the other side have cited several cases, for the purpose of showing that it was the intention of this Court to give to this provision of the Constitution as restricted and limited application as possible.

MR. JUSTICE MILLER: The purport of the general discussion in the Slaughter-house Cases on this subject was nothing more than the common declaration that when you come to construe any Act of Congress, any statute, any Constitution, any legislative decree, you must consider the thing, the evil which was to be remedied, in order to understand fairly what the purpose of the remedial Act was.

MR. SANDERSON: We agree perfectly; and I am not going to urge that there is anything contained in the Slaughter-house Cases which admits of a different construction than your honor now puts upon it. But I must confess that there has been an impression that the Slaughter-house Cases narrowed the provisions of the first clause, and also the provisions of the two latter clauses—their scope, as one would naturally understand them from reading their words.

But, as I was about to show when your honor interrupted me, the Slaughter-house Cases do not justify such an impression. Your honor says, at page 72: "We do not say that no one else but the negro can share in this protection. * * * And so, if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent." I am very glad to have any doubt which has existed in the minds of the profession in regard to the purport and meaning of that decision cleared up by an authoritative opinion, given in this public manner. I understand, then, that we may consider, for the purposes of this case, so far as your honor is concerned, that the color line has disappeared from American jurisprudence; that there are not two Constitutions in this country—one for the black man and one for the white man—and that the white man is at last on an equality with the negro. But, nevertheless, in view of the fact that there are some Judges on the bench who were not here at the time the Slaughter-house Cases were considered, and who may, so far as I know, entertain the idea that there are some clauses of this amendment which confine its operation to the negro race, I do not propose to discontinue my argument on this point. Let us reverse the conditions presented by Mr. Justice Miller in the Slaughter-house Cases, in reference to the condition of the negroes at the South, and the character of the legislation which had been enacted against them for the purpose of testing whether this constitutional restriction was intended to be confined exclusively to them or not. I say, suppose in those three States—Mississippi, Louisiana, and South Carolina—where the negro population preponderated over the white, the negroes had possessed the requisite intelligence and nerve to organize themselves into a political party, and had elected their own men to office; had filled the halls of legislation and the halls of justice with persons of their own race; suppose they had enacted laws prohibiting white persons from residing in the towns, except in the capacity of menial servants, requiring them to reside upon the soil and till it, but denying to them the right to purchase it, or own it; had denied to them the right to testify in cases in Courts of justice where negroes were a party; had, by the failure to pass sufficient or to provide for the efficient administration of the laws, allowed the beating down of white men by negroes, as is represented to have been done to negroes by white men in the Slaughter-house Cases. Now, suppose these poor whites had come to this Court, claiming protection against such legislation; suppose they had come to this Court and invoked for their protection against such outrages the provisions of the fourteenth amendment to the Federal Constitution. Would this Court have closed its doors in their faces? Would it have said to them: "The fourteenth amendment was intended to prohibit white men

from enacting such legislation against black men, but it was not intended to prohibit black men from enacting such legislation against white men?" I do not think the Court would have so answered; I am now more satisfied than ever that it would not. I am glad to know that we have not, in this country, two Constitutions—one for the black man and one for the white man. I am glad to know, in advance, that the color line is about to disappear from legislative and judicial history in this country, and that all of us, white as well as black, are to stand side by side upon the broad platform of universal equality in the presence of the law of the land.

But it is also said that we are not entitled to the benefits of this provision of the fourteenth amendment, because the laws of which we complain are not within the operation of the fourteenth amendment; are not the laws to which the fourteenth amendment refers. In other words, it was not intended by the fourteenth amendment to vest the judiciary of the United States with the power of reviewing the revenue laws of the States to ascertain their purpose, or to ascertain whether they were consistent with the Constitution of the United States or not. Where is there a warrant or authority for such an assertion? You do not find it in the language, it is not there; "nor shall any State deny to any person equal protection"—of what? "of the laws" against crime; with the respect to the enjoyment of property; in relation to proceedings in Courts of justice; laws relating to conveyancing, and the thousand and one subjects of which laws treat? Not at all. "No State shall deny to any person the equal protection of the laws"—all laws—any law by which a State may deny to any person equal protection with some other person. Now, the subject-matter of the law is a matter of the utmost indifference. It is not that against which the Constitution of the United States is to provide protection. No matter what the subject may be, it is as to the law itself—no matter what it relates to. That law must operate equally. Each person must find who comes in contact with it, equal protection at its hands, no matter in what department of the law it may be found.

THE CHIEF JUSTICE: You have a half hour left to complete your argument.

MR. SANDERSON: Then I will submit only one or two more suggestions, for the purpose of showing that tax laws are within the operation of that amendment. We have already agreed that the negro is within the meaning of that amendment, and now we have all agreed that the white man is within the meaning of that amendment. Therefore, we have made some progress. Therefore, I will suppose, if there should be anybody who still adheres to the color line theory, that South Carolina should pass laws imposing a capitation tax upon persons within its jurisdiction, say a capitation tax of \$5 upon negroes and \$2 50 upon white men, would my friends upon the other side, who say that the negro is shielded and protected by the fourteenth amendment, say that law is not within it because it was a law made in the exercise of the taxing power? I think not. Suppose they should pass a law by which the property of white men, when sold for taxes, should be sold subject to redemption at any time within one year. Suppose that they should provide that in the case of black men the property so sold should be sold absolutely, and not be subject to redemption at all. Would that be a case within the fourteenth amendment? Yet that would be a law in relation to taxation. Why, it is hardly necessary, may it please the Court, to illustrate this matter further. Tax laws are the very laws of all others which are within the operation of the fourteenth amendment. It is by the exercise of the taxing power that oppression and tyranny has been visited upon peoples and countries from the earliest ages down to the

present time. It is the one element of despotism and tyranny yet left in every government of republican forms.

MR. JUSTICE BRADLEY: In former times, and I think at present in some States, it was customary to impose special taxes on objects. On a mill, it was \$10 on every mill in the State, and on every carding machine, and so on. Various articles were specially taxed. In New Jersey they were called specialties, and like all other property so assessed, valued at a valuation and taxed *pro rata*. And at present I presume that railroad property and railroads are in some States taxed specially so much, perhaps, on their income as a commutation of all other taxation. Now, do you contend—do your principles require you to contend—that a State has lost its power of thus taxing different species of property in special lines?

MR. SANDERSON: Not at all.

MR. JUSTICE BRADLEY: That has not been particularly dwelt upon, and I did not know but what you did.

MR. SANDERSON: Not at all. We admit to the fullest legal extent the power of a State to classify property for the purpose of taxation. We have never contended for anything else, and if there is anything in this case which puts us in that attitude before the Court, it has come from counsel on the other side in misapprehending our views. We do not deny the power of the State to classify property for the purpose of taxation, but we do deny that the State of California has exercised that power, except to a very limited extent, by exempting growing crops and exempting credits equal to the amount of debts. It has made no classification whatever of the property, but it has declared, on the contrary, that all property shall be taxed according to its value.

MR. JUSTICE BRADLEY: That is their Constitution, but I am looking at the fourteenth amendment.

MR. SANDERSON: The fourteenth amendment simply requires equality; that the law should bear equally upon all persons and things upon which it bears at all: that is our position. You may cast the burdens of taxation upon one species of property to the exclusion of another; such a law affords equal protection to all upon whom it operates. To illustrate: Suppose the State should levy a specific tax of 25 cents upon the cows of A and 50 cents upon the cows of B. The power of selecting a cow for the purpose of taxation and levying a tax upon it we admit. What we deny is that you can levy a tax of 25 cents on the cows of A, and at the same time levy a tax of 50 cents on the cows of B; and the fourteenth amendment, in declaring that no State shall deny to any person the equal protection of the laws, means that. It means that wherever the law touches different individuals, wherever such individuals stand in the same relation to the law, where the conditions and the circumstances are the same, the rule of law shall also be the same. In the example which your honor just cited of taxation in New Jersey, you do not tax the mill of A so much, and the mill of B so much more, and so on.

MR. JUSTICE BRADLEY: No; but it might be taxed higher than other property of the same character.

MR. SANDERSON: We hold that when an ad valorem system of taxation is adopted, or a specific system (you can tax by either process), you cannot impose a greater rate upon the property of A than upon the property of B of the same kind; nor can you adopt one mode of valuation in the one case not resorted to in the other, if the result be the laying of a greater burden upon one person than another in respect to the same kind of property. Such legislation, we say, is prohibited by the fourteenth amendment.

MR. JUSTICE BRADLEY: In other words, when the tax becomes personal in an invidious sense.

MR. SANDERSON: Yes; it is then a discrimination, not between different kinds of property, but between different owners of the same kind of property. To illustrate: This case shows that the defendant in error is the owner of about eight million acres of land granted by the United States to enable it to construct its road. It was granted each alternate section to the number of ten on each side of the road per mile. Now the even sections are owned by natural persons. We will assume that a natural person has put a mortgage on his to one half its value. We will assume that the mortgage of the railroad company is also one half of its value. Now, these lands are of identical quality and quantity and value. They are the same in all respects; you cannot distinguish one from the other. I will assume, for the purposes of my illustration, that it is the same, and that you cannot distinguish one from the other on the score of value. Now, if in ascertaining the value of his land, the natural person is allowed to deduct the face value of the mortgage upon it and to be assessed for the remainder only, and the defendant is denied a deduction, and made to pay taxes upon the full value of its land, without regard to the mortgage, then, I say, it is not a discrimination between different kinds of property; the property is identically the same—I say it is a discrimination between different owners of the same kind of property.

MR. JUSTICE HARLAN: You therefore deny the right of the State to tax the land of the individual citizen without allowing him to deduct the mortgage, and at the same time allow the railroad owning similar land to deduct the mortgage.

MR. SANDERSON: Of course I do; that is simply reversing the question, if I understand it. It results not in a discrimination between different kinds of property for the purpose of taxation, but in a discrimination between different owners of the same kind of property. There has been some confusion of ideas brought into this case, arising from the fact that counsel on the other side are all the time talking about railroad property, and speaking of it as property mentioned in the fourth section of the thirteenth article of the Constitution of the State. Now, railroad property is not referred to at all except when you come to the question of assessment. It says, "except as to property," not as to railroads, but as to the property of railroad and other quasi public corporations. It is not an exception as to railroads only—they alone are not taken out of the general rule and set apart by themselves—but property of every kind and description. It is the property of railroad and other quasi public corporations that is taken out of the operation of the general rule. Now, what are quasi public corporations? There are other than railroad corporations which come within the operations of this rule—toll-bridge companies, ferry companies, steamship and hotel companies, corporations engaged in any kind of business which, under the Granger Cases, is affected by a public use—elevator business, for instance. Take an elevator erected in Chicago—

MR. JUSTICE HARLAN: How about telegraph companies in California; are they not public corporations?

MR. SANDERSON: They are.

MR. JUSTICE BRADLEY: I regret to interrupt you, but it might throw light on a question which has arisen in my mind. What objection have you to these corporations being taxed to the full value of the property, with the permission or privilege of charging the incumbrance or mortgage? Railroad companies and other large corporations, if they should put a mortgage on their property and issue innumerable bonds, it would be hard to

find those bonds to tax; whereas, in case of private individuals and their bonds and mortgages, it is easy to tax property by itself and the bond and mortgage by itself. The bond and mortgage is recorded, but railroad bonds are scattered all over the world. Now, as a mode of getting at the tax on the whole property, what is the serious objection to charging it all to the railroad, and permitting them to charge against the bondholders the amount which would be due from them on the tax; or is not that done in this law or in this Constitution?

MR. SANDERSON: No, sir; and that is just what is the matter. If we were allowed, I do not know but what we might be willing to serve as a tax-gatherer, although I do not know that the Government has any power to impose upon us that duty. But the difficulty here is that this mortgage on the property represents an undivided interest in it for the purposes of taxation.

MR. JUSTICE BRADLEY: That is in private property.

MR. SANDERSON: But of course we claim that the rule should be extended to quasi public property. Each has an interest in the land. The mortgagor and the mortgagee are tenants in common.

MR. JUSTICE BRADLEY: I understand that.

MR. SANDERSON: Now, in the case of natural persons, each interest is taxed to each tenant, but in the case of quasi public corporations there is no such division or deduction made. There is no pretense of assessing the mortgage against the mortgagee, as in the other case. If there were there might be no objection to the companies collecting the tax and paying it over, and therefore no valid objection to the law.

MR. JUSTICE BRADLEY: The Constitution is put in the brief in piecemeals—in fragments—and I have not seen the whole of it. Is there no provision allowing the railroad company or other quasi public corporation to charge against the incumbrancer the tax?

MR. SANDERSON: No, sir; none whatever. There is in the case of natural persons. In the case of a railroad company or other quasi public corporation no such question could arise, for the obvious reason that the mortgage is not taken into account at all; it is ignored as a false quantity in measuring the liability of a railroad or other quasi public company under the taxing system.

It has been suggested—and I call the attention of the Court to it in my brief—that we have, in support of our view in relation to this question of whether tax laws are within the operation of the fourteenth amendment, a legislative construction on the part of Congress in the reenactment of the civil rights bill after the fourteenth amendment was adopted. In this reenactment Congress inserted “taxes,” “licenses,” “burdens,” and “exactions” of every kind and description, although they were not in the civil rights bill originally, and probably were omitted for the very reason for which counsel contend upon the other side, that State tax laws were not then within the operation of the Federal Constitution. Had the bill originally contained this provision as to taxes, etc., it doubtless would have been unconstitutional; but upon the adoption of the fourteenth amendment such a provision became constitutional in the judgment of Congress, and that body, in reenacting the bill, industriously inserted this provision in relation to taxes, licenses, burdens, and penalties of every kind, and thus gave to the fourteenth amendment a legislative construction.

The admonition of the Chief Justice that the time allowed me is about to expire, compels me to pass, in silence, several questions involved in this case—as to whether the Constitution and laws of California discriminate between quasi public corporations on the one hand, and natural persons

and corporations not quasi public on the other hand; as to whether the system of taxation in California can be considered as a classification of property for the purpose of taxation; as to whether such system can be sustained as valid on the ground that in adopting it the State was in the exercise of the power to alter and amend general laws in relation to corporations: as to whether the guaranty of due process requires notice and an opportunity to be heard in the exercise of the taxing power of the States, and as to what is meant by the equal protection of the laws guaranteed to every person by the fourteenth amendment. I regret that I am denied, by the lapse of time, an opportunity to discuss these most important questions. Fortunately my associates left nothing to be said upon these points. They are pretty fully discussed in my brief, which I hope your honors will read.

In closing what little I have been allowed to say as to the construction of the fourteenth amendment, I take the liberty of adding that I have always believed, and, in opposition to the able arguments of my learned friends upon the other side, I still believe, that by these two clauses of the fourteenth amendment the principles of Magna Charta and of the Declaration of American Independence have been incorporated into our National Constitution, as a just and wholesome restriction upon the power of the States. I believe that the clause in relation to due process means the same as it means in Magna Charta—the same as it means in every State Constitution—the same as it means in the fifth amendment to the Federal Constitution, except that there it is a restriction upon national power, while in the fourteenth amendment it is a restriction upon State power. I believe that the clause in relation to equal protection means the same thing as the plain and simple yet sublime words found in our Declaration of Independence: "All men are created equal." Not equal in physical or mental power; not equal in fortune or social position; but equal before the law. I do not believe that the two clauses in relation to due process, found, one in the fifth and the other in the fourteenth amendment of the Federal Constitution, mean the one more or less than the other. I do not believe that, like the witches in Macbeth, they

"Palter with us in a double sense—
Keep the word of promise to the ear
And break it to the hope."

As they speak the same language, so, in my belief, they declare the same intent. I believe that these two clauses were the one stone lacking to complete the edifice. I believe them to be the crowning glory of the Federal Constitution, and I regret that there is any disposition in any quarter to dim their luster or fritter away their substance by a narrow and emasculating construction of their language.

I pass to the last question presented by the record, and that is as to whether the franchise of the defendant is taxable under State laws or not, or whether it is protected from State taxation by the supremacy clause of the Constitution of the United States. That is the provision of the Constitution to which we appeal for the purpose of showing that this franchise—the right to be, the right to exist, the right to maintain and operate this road—is beyond the reach of the taxing power of the State of California.

THE CHIEF JUSTICE: The State of California incorporated the Southern Pacific Railroad Company, did it not?

MR. SANDERSON: Yes, sir.

THE CHIEF JUSTICE: And by Act of Congress there has been some additional franchises or grants?

MR. SANDERSON: Yes, sir.

THE CHIEF JUSTICE: It is in the same condition that the Central Pacific was?

MR. SANDERSON: Yes, sir. This corporation was originally organized under the laws of the State of California for the purpose of building a road from the Bay of San Francisco down the coast of California to San Diego, and thence eastward to connect with a road to be constructed from the Valley of the Mississippi to the Pacific Ocean. At what particular point the road would cross the eastern boundary of the State could only be conjectured. Hence the company fixed no point for the southeastern terminus of its road. Congress passed an Act authorizing the company to connect with the Atlantic and Pacific Railroad at a point on the eastern boundary of the State of California, where that road should cross, and thence build a road by the most eligible route to the City of San Francisco.

I will state here, because I do not want to be misunderstood, that I do not claim that it is necessary to establish the proposition that we are a national corporation in order to secure the exemption which we claim. While I propose to establish that fact if I can, yet it is not indispensable, because the franchise of a State corporation becomes exempt from State taxation, as we claim, whenever such corporation has been selected by the United States to serve the Government in the capacity of an agent, or means of carrying into execution certain governmental powers of Congress.

But it makes a clearer cut case, if I establish the proposition that this corporation is not a mere local State corporation endowed with a life for fifty years only, but a national corporation, selected by the Government of the United States, adopted by the Government of the United States, for the purpose of constructing, maintaining, and operating a post and military road for all time, and to that end endowed with immortality.

It is not necessary in creating a corporation, that there should be any express grant of corporate powers. If the words "erect," "establish," "create," etc., are not employed, it makes no difference. It requires no magic words, no set or formal phrase, to erect a body of men into a corporation. It may be done by implication. It may be done as summarily as in the days of chivalry the honor of knighthood was conferred—"Kneel down and rise up, Sir Knight." All that it is necessary for the Legislature to do is to confer some right or some grant on a body of men by a collective name which cannot be enjoyed except by the exercise of corporate faculties, and that alone, by implication, endows the association with corporate powers, endows them with immortality, and with all the other powers which may be necessary to carry out the purpose of the grant. If the king makes a grant of land to the "Men of Islington" without words of succession, they become a corporation, for otherwise the grant would fail.

I do not contend that in thus adopting a State corporation it is necessary to sever its connection with the State. It is not necessary to sever it. A corporation may have a dual existence; it may be Janus-faced—one face turned toward the State, and the other toward the United States. We are citizens of the United States and of the State in which we reside. So corporations may be corporations of the United States as well as corporations of the State in which they reside or have their principal place of business. What has this Court said in support of the proposition that one sovereign may adopt a corporation created by another sovereign? In 2 Black will be found a case where a railroad corporation created under the laws of Indiana proposed to extend its road to Cincinnati, Ohio, and to that end applied to the Legislature of Ohio for a grant of corporate powers and privileges to enable it to cross the border line, and penetrate Ohio to Cin-

cinnati. The Legislature of Ohio, intending to grant them all the powers that were requisite in order to accomplish that purpose, undertook to pass, and did pass, substantially, the same charter—the same law under which they were incorporated in Indiana. Very well; what was the result of that? Was this corporation thereafter a mere corporation of the State of Indiana, or did it, without losing its character as a corporation of the State of Indiana, become also a corporation of the State of Ohio, and entitled to enjoy the franchises and powers conferred upon it by that State? The question came up before this Court in 2 Black. The corporation brought a suit in its capacity as an Ohio corporation against certain citizens of the State of Indiana. They interposed a plea to the jurisdiction of the Court, claiming that the corporation was a citizen of the State of Indiana, and, therefore, could not sue the citizen of Indiana in a Federal Court. Answering to the plea, this Court said in substance:

“This body of men have a dual or double existence, and they are a corporation within the State of Indiana, under the laws of Indiana. They are also a corporation of the State of Ohio, under the laws of the State of Ohio. But they cannot maintain their action, because it is a joint action on the part of both corporations, and, therefore, they must seek their remedy in State and not in Federal Courts.”

Now, if the State of Ohio could thus adopt a corporation of the State of Indiana, why may not the United States adopt a corporation of any State of the Union, and put it to its uses in carrying into execution laws constitutionally enacted by Congress for the purpose of carrying into effect the powers of the Federal Government? Why not? Is there any impediment in the way? That is precisely what was done in the Central Pacific case. Now, what was the condition of that case? The Government proposed to establish a post and military road by which the Mississippi Valley should be connected with the Pacific Ocean. It was in time of war. Armies were marching through the republic. Blows were being struck at the vitals of the nation, and it was important that this road should be constructed “on time,” to use a railroad phrase. What did they do? They created a corporation at this end of the line—none being here—offering their services to construct and operate and maintain the road. Over at the other end was a little State corporation organized originally for the purpose of building a railroad from Sacramento to the eastern boundary of the State of California, a distance of about one hundred miles. It was an insignificant corporation, but it was headed by men of energy, zeal, and determination. Instead of creating a corporation at that end of the road for the purpose of building it, what did Congress do? They found a corporation organized under the laws of California, standing ready and willing to be selected by the Government of the United States as its agent, and they selected it. In creating the Union Pacific they endowed it with immortality. They annexed certain conditions to the construction and management of the road; required it to be built of a certain gauge, and to be operated as one continuous line. They authorized it and other companies to consolidate. They conferred upon it divers powers, such as are usually conferred upon corporations; and finally provided that all the grants of the Union Pacific should inure to the benefit of the Central Pacific upon their complying with the conditions of the Act. The Central Pacific was authorized to do what? To build a road from Sacramento to the summit of the Sierra Nevada Mountains? No. But to build a road from San Francisco east until it met the Union Pacific, building west. In other words, it was authorized to cross the boundary line between the State of California and the Territory of Nevada; authorized to pass through Nevada into Utah, there

to connect with the Union Pacific at Ogden. It was authorized to build a road in its own State, where it had no authority to build under its charter. It was authorized to build a road in the territory of the United States, where it had no authority to build a road under its charter. It was required to build and maintain a road for all time, although it can exist only fifty years under the laws of California. It was authorized to build and maintain a link in a post and military road, created and established by the Congress of the United States, in the exercise of the powers of the Government of the United States over the subjects of commerce and war. Now, will the gentlemen answer me who it is, and who it was, that granted the franchise which the Central Pacific Railroad Company is exercising? If they exist as a corporation in Nevada to-day, they do not so exist by virtue of their organization under the laws of the State of California. If they exist as a corporation in Utah, it is not by virtue of the laws of California. They exist there, if at all, by virtue of their charter from Congress in 1862; that is their only charter; their only authority; the only thing to which they can appeal for protection, in case their rights be invaded.

Now, suppose the State of Nevada should come to the conclusion that it would be better for that State to put a stop to the Central Pacific Railroad. Suppose its Legislature should instruct its Attorney-General to institute proceedings by *quo warranto* for the purpose of testing the right of the Central Pacific Railroad Company to use the franchise it is using in the State of Nevada. Suppose the State Courts of Nevada should come to the conclusion that the corporation is a mere State corporation; that it has no powers or existence outside of the State of California; should come to the conclusion that it is without a charter or authority to exist or exercise franchises in that State, and should declare it to be an usurper, and should enjoin it forever from exercising any of the powers conferred upon it by the Act of Congress. Suppose that to be done to-morrow; what would the Central Pacific Railroad Company say in reply? Would they appeal to their California charter? No! No! California never has—never can—confer upon them the power to exist and operate a road in Nevada or Utah. To what, then, would they appeal? To the Act of Congress of 1862, and to that alone. That is their shield, and the only shield that can afford them any protection against such action. Could they not continue to operate the road, notwithstanding such a judgment by a Court of the State of Nevada? Is this Court willing to admit that the State of Nevada has the power, under the conditions stated, to destroy—not retard, embarrass, delay, burden—but actually *destroy* and prevent the operation of the laws by which Congress has sought to carry into execution some of the well understood and acknowledged powers of the Federal Government? I imagine, if such a case should ever occur, it would result in establishing the proposition that the Government of the United States may select State corporations, as well as natural persons, and constitute them their agents for the purpose of carrying into effect the lawful orders of the Government of the United States in the exercise of constitutional powers.

THE CHIEF JUSTICE: Your time has expired.

MR. SANDERSON: I want about five minutes more to call attention to what this Court has said upon this question away back in the time of the United States Bank, an institution created on the same principle that the Union Pacific Railroad was created, except for banking purposes. Of the \$37,000,000 capital of that bank, only \$7,000,000 was contributed by the United States. That bank was created for the purpose of carrying into execution certain measures in relation to finance; to assist in transmitting money north and south, east and west. It was a mere financial agent,

insignificant in comparison with the objects sought by the construction of railroads across this continent, by which a pathway over hill, mountain, and dale is made for the commerce of the world. Now, what did Maryland do in relation to that bank? It imposed a trifling tax on paper which that bank required for the purpose of printing its bills. Chief Justice Marshall said—not because it prevented the bank from carrying out the purpose of Congress, but simply because it tended to that end—the existence of such a power in the States would be destruction to the supremacy of the United States. That the power to tax the means employed by which to carry into execution the constitutional powers of the National Government was a power by which such means could be destroyed, and therefore such a power could not be recognized as existing in the States.

What did Ohio do? It levied a license tax upon the operation of the branch banks in that State—precisely what is being done by the City of Los Angeles in regard to this railroad, making it pay a license tax on every locomotive and car passing through that city. It was a tax on the operations or business of the bank. What said this Court? It said, in effect: If you can tax it 1 per cent you can tax it 200 per cent, and thus make it impossible for it to carry on the business for which it was created. Therefore, we cannot recognize the existence of such a power; it is suicidal, it is fatal to the supremacy of the Government of the United States, and it cannot be tolerated or recognized at all; not because Congress has said so, but because the people of the United States have said the Constitution of the United States shall be the supreme law of the land, any law or ordinance of any State to the contrary notwithstanding—the supreme law, in the presence of which all the States must stand uncovered.

In regard to the railroad cases, in which you have decided that the tangible, visible property of a railroad corporation does not fall within the rule of the cases which I have cited, I have to say that in the last of them you have expressly decided that a tax on tangible property is not a tax upon the right of a company to exist, the right or franchise of the company to do and transact the business for which it was created. By implication you hold that, had the tax been laid on these franchises, it would have come within the rule announced in the United States Bank cases and other cases cited in my brief. By implication as strong and conclusive as positive affirmation, you have admitted that, if it (the tax) be a tax on the franchise—the power of the company to exist and transact business as a corporation—it is within the reason of the rule announced in *McCulloch's* case, and therefore invalid. We rely upon this implication.

One word in relation to an error into which, in my judgment, this Court has fallen in respect to the power of Congress in respect to the taxation of Federal agencies by the States. Chief Justice Chase, in the first railroad tax case, said: "In the absence of any legislation by Congress prohibiting the taxing of this road or permitting it to be taxed," etc. Here for the first time it is suggested by this Court that it is in the power of Congress to control this question of the taxation of agencies provided by the Government for carrying into execution its powers; that Congress has the power to permit the States to tax them or to prohibit the States from taxing them. I deny that Chief Justice Marshall ever conceded for a moment that the Federal Congress had any power on this subject; it was held to be a purely constitutional question, and that the Constitution of the United States interposed between its agents and the hostile action of the States the shield of its supremacy. I deny the power of Congress to yield and resign to the States the supremacy of the United States. If the States are debarred from taxing a given thing, it is by virtue of the Constitution of

the United States, and not by virtue of any Act of Congress. If they are allowed to tax a given thing, it is because they are not forbidden by the Constitution of the United States, and not because they are not forbidden by Congress.

SACRAMENTO, February 23, 1889.

E. BLACK RYAN.

Called and sworn.

MR. CROSS: What is your relation to the Central and Southern Railroad Companies? Answer—I am tax agent for them.

Q. How long have you been their tax agent? A. Since 1872.

Q. As such tax agent, have you become familiar with their tax matters? A. Yes, sir.

Q. Have you access to their books? A. Yes, sir.

Q. State whether or not you have made a tabulated statement of the amount of taxes paid by the respective companies since 1879? A. I have.

Q. Please present it. A. [Witness produces paper.] I have it here.

Q. Please read the summaries of it to the committee; the summary for each year, of all the roads owned and controlled by the Central and Southern Pacific Railroad Companies, beginning with the year 1880.

MR. JOHNSON: I would suggest that it be introduced in evidence, with our privilege to answer it.

MR. CROSS: It is only eight items.

THE WITNESS: There is a recapitulation.

Q. Yes; not what is on this paper; the recapitulation showing the amount of taxes paid for each year? A. Yes, sir; it is a very long list.

Q. Read the Central Pacific list, and then we will file the whole? A. Yes, sir.

Q. In the year 1880, how much taxes were paid in this State by the Central Pacific Railroad Company? A. I have got the footings; I have got three columns.

Q. Read that? A. First in 1880—

Q. That is paid to the State, is it? A. On the assessment made by the State Board; the taxes paid on the assessment made by the State Board.

Q. Read it? A. In 1880, \$153,077 60; in 1881, \$163,338 21; in 1882, \$163,951 06; in 1883, \$166,119 10; in 1884, \$169,685; in 1888, \$218,312 76.

Q. Now, have you the amounts paid to the several counties on such property as they were taxed by the local Board? A. Yes, sir.

Q. Read that? A. In 1880, \$58,912 31; also for 1880, \$28,987 55. For 1881, \$59,818 78; also, \$28,892 27. For 1882, \$58,622 51; also, \$25,444 95. For 1883, \$65,653 93; also, \$26,596 46. For 1884, \$57,740 21; also, \$29,970 69. For 1885, \$58,350 23; also, \$28,601 95. For 1886, \$48,942 74; also, \$27,447 78. For 1887, \$51,223 93; also, \$27,835 27. For 1888, \$45,882 86; also, \$29,063 81. That makes a total of \$1,788,474 96 for the Central Pacific Railroad Company.

Q. Paid in eight years? A. Yes, sir; paid in eight years.

Q. Have you upon this same paper, and in the same form, the tabulated statement of the amount of taxes paid on each of the other roads controlled by the Central and Southern Pacific Railroad Companies? A. Yes, sir.

Q. And in that tabulated statement? A. Yes, sir.

Q. We desire to file that. What is the total aggregate of taxes paid in

that eight years by roads owned or controlled by the Central and Southern Pacific Railroad Companies?

MR. DIBBLE: How will that go in the record if we find it that way?

THE WITNESS: I have not got it segregated. It won't take a long while for the committee to do it.

MR. CROSS: Let me look at that statement. A. I will state to the committee that in verification of this there are vouchers on file in the Secretary's office.

Q. What is the total amount of taxes paid by the Southern Pacific Railroad Company in eight years? A. The Southern Pacific Company paid in those eight years \$1,143,302 17.

Q. What amount has been paid by the California Pacific Railroad Company? A. \$150,519 03.

Q. By the San Pablo and Tulare Railroad? A. \$50,248 30.

Q. By the Northern Railway? A. 143,926 27.

Q. Now, then, by the Southern Pacific Branch Railroad? A. That has only been for two years.

Q. That has been in existence for two years? A. Yes, sir; \$17,958 85.

Q. The Stockton and Tulare Railroad? A. That is only one year.

Q. That is as long as they have controlled that property? A. Yes, sir; only a part of a year. \$2,094 42.

Q. What have you next? A. The San Pablo and Tulare Extension. That is about a year old. \$2,170 10.

Q. What is the next road? A. The Los Angeles and Independence. \$18,152 43.

Q. How much did you say that was? A. \$18,152 43.

Q. Now the Los Angeles and San Diego Railroad? A. \$48,073 16.

Q. The Monterey Railroad? A. \$24,793 19.

Q. The Berkeley Branch Railroad? A. \$3,285 01.

Q. That is one year? A. No, sir; that is for several years; but it is a very short line.

Q. The Santa Rosa and Carquinez Railroad? A. \$1,115 32.

Q. The Long Beach? A. \$233 10.

Q. The others are small? A. Long Beach and San Pedro. \$316 21. Shingle Springs and Placerville—that is less than a year—\$1,045 50.

Q. What is the San José and Almaden? A. \$1,106 60.

Q. These are the amounts paid by these companies since the adoption of the new Constitution? A. Yes, sir.

Q. You have not added them? A. No, sir.

MR. DIBBLE: What is the sum total? A. I have not added them up. I have got the sum total here, but not in such a manner that I can show—that I can call it off. The total amount paid in one year, for instance the year 1880, I cannot state without adding the three columns together.

Q. Well, what is the sum total? A. \$5,876,261 74.

Q. That is in eight years? A. That is in eight years. But to the South Pacific Coast Railroad Company, which has been owned and controlled by the Southern Pacific Company only two years, there was paid by their predecessors the sum of about \$87,000.

THE CHAIRMAN: Does this include the State and county taxes? A. Yes, sir.

MR. DIBBLE: Does this include taxes upon real estate owned by the company as well as the roads properly? A. It includes everything owned by the companies.

Q. The real estate that is not connected with the road, bonded land from the United States? A. I will state that prior to 1880 there were a

great many thousands of acres of land that were paid on; but that has been reduced each year until 1888, when there were several counties that have not an acre in them. During last year, and year before, and part of the previous year, the Southern Pacific Company came near selling out their entire public lands.

MR. SEAWELL: Does this include the Market Street Railroad? A. No, sir.

Q. Does it include the Hotel Del Monte? A. No, sir; the Hotel Del Monte belongs to the Pacific Improvement Company.

MR. DIBBLE: It does not include the street railroads in San Francisco? A. It includes the property of the steam railroads and not the street railroads.

MR. SALOMON: Does it include all the lands? A. Yes, sir; the subsidy lands, what is left of it, owned by the company—the Central Pacific and Southern Pacific Companies. That cuts a small figure, comparatively.

MR. CROSS: Now, Mr. Ryan, do you know anything about the mortgages on these properties of the Southern and Central Pacific Railroad Companies? A. Yes, sir.

Q. Tell the committee what the mortgages are, and what they have been since 1879. That is the time when the new method of taxation was adopted. A. I would state that the average amount of bonded indebtedness, say for ten years, on one thousand two hundred and fifty miles of the Central Pacific Railroad is \$57,000,000.

MR. DIBBLE: How much? A. \$57,000,000.

MR. CROSS: How much of that mileage is in this State?

MR. DIBBLE: Right here, what has been the average assessment on all the property of the companies? A. The Central Pacific first? The Central Pacific in 1883 was assessed for \$18,000,000; then in 1884, \$24,000,000.

MR. CROSS: Do those assessments include the assessments made by the local Boards or only the State Board? A. Only the assessments made by the State Board.

Q. Yes, sir. A. 1885, \$22,000,000; 1886, \$30,000,000; 1887, \$18,000,000; 1888, \$15,000,000.

Q. Now, taking the mileage as one thousand two hundred and fifty miles, how many miles of that, which you speak of as covered by the Government loan, how much of that mileage is in the State of California? A. Out of one thousand two hundred and fifty miles, say take six hundred and twenty miles as the average.

Q. What was it in 1880? A. Six hundred and two.

Q. What was it in 1888? A. Seven hundred and forty-seven.

Q. Yes, sir. The average, you say, would be six hundred and twenty? A. Yes, sir; that average would be too low for California. I have made an average of six hundred and twenty miles.

Q. Well, that would be a correct average? A. Yes, sir; on the basis of six hundred and twenty miles it would be an average.

Q. The increase has almost all been made in the last two years? A. Yes, sir.

Q. How much mortgage would then be pro rated to the State of California? A. On the basis of six hundred and twenty miles, it would be \$27,752,000.

Q. So that if railroad properties were subject to the same rule of deduction of mortgages and liens as other property, that amount should be deducted from the assessment, and the balance would then be assessed to the railroad company, would it? A. Yes, sir.

MR. CROSS: Now, I will turn this witness over to the committee in just

one moment. There is a statement here which appears in Controller Dunn's report for 1888.

MR. DUNN: One moment.

MR. LEZINSKY: I desire to state to the committee that if statements are in order now, we will never get to this testimony.

MR. ANDERSON: I understand we are here to investigate certain charges that have been preferred against some parties or attorneys interested in the railroad tax cases. Now, we are here to investigate that. I don't think we ought to take testimony on anything else, only what bears on those particular charges. As far as I am concerned, I don't think we ought to investigate these charges; for even if we find them true, I don't know what we are going to do about it. If there is any officer of the State who has not done his duty his bondsmen are liable. We are here to investigate those charges, and I think that is what we ought to investigate to the exclusion of everything else. As far as the railroad tax bill that has been introduced, that has already left this committee. We have reported back on that bill. A majority of this committee reported that it do not pass; a minority reported that it do pass. I am free to state how I feel about it; I am opposed to the bill on constitutional grounds. I don't believe it is an advisable measure. I don't care whether the railroad company has paid every dollar of taxes to the State or not, or whether they owe the State or not; that has nothing to do with this bill. The bill is a general bill. It applies to all corporations as well as railroad companies. The question for us to decide is, is it constitutional, and if it is constitutional, is it advisable? We have already decided on that. It is now in the hands of the House. What do we want to go into the matter any further for? As far as the railroad taxes are concerned, whether they are or are not paid, that is a matter of record. We cannot go back of this record. We are here to investigate these charges that have been preferred, and I am willing to go on and investigate them. Even admitting that the charges are true, all we can do is to recommend that the Attorney-General commence suit against somebody, and I presume that the Attorney-General has power to do that without our recommendation. I don't believe this thing ought to last the entire session.

MR. DIBBLE: There seems to be some misunderstanding about the scope of this resolution. The resolution is as follows: "Whereas, grave questions are at issue; and whereas, John P. Dunn, Controller of the State, at the joint meeting of the Senate and Assembly Judiciary Committees, on Friday, February eighth, urged that the subject of railroad taxes be investigated by the said committee; therefore resolved, that the Judiciary Committee be authorized to investigate said question fully and to report to the Assembly the result of such investigation, with such recommendations as they shall think proper; and for the purpose of said investigation, the said committee be authorized to send for persons and papers," and so forth, and so forth.

MR. SALOMON: I was of the opinion the same as Mr. Anderson, but thinking over the matter, I remember that there was a clause in there authorizing the committee to investigate the whole subject. I would like to ask Mr. Ryan a question. I have heard it stated that for three years the railroad company has paid no taxes whatever; no taxes at all for the years 1883, 1884, 1885.

MR. DUNN: The years 1885, 1886, and 1887.

MR. SALOMON: I would like to ask Mr. Ryan how that is. If they have paid any taxes, and if not, why? A. They have paid taxes.

Q. Have they paid anything on the franchise, railroad bed, rails, and

rolling stock; have they paid anything for the year 1885? A. No, sir; not on the State Board assessment.

Q. For 1886? A. No, sir.

Q. Anything for 1887? A. No, sir.

Q. How much did they pay in 1883? A. \$166,119 10.

Q. Do you know why the taxes in 1885, 1886, and 1887 were not paid? A. As I understand it, on account of being in litigation, and to abide the result of that litigation.

Q. Do you know anything about that litigation? A. Yes, sir; incidentally.

Q. Well, the cases of 1885; the case that went up from the Circuit Court to the Supreme Court of the United States; what taxes did that include; the case in which it has been charged that the record— A. That was 1881 and 1882.

MR. HYDE: That was 1883.

MR. SALOMON: The tax for which the tender of \$300,000 was made? A. Made by Colonel Creed Haymond in Court?

Q. Yes, sir. A. I can't state the exact year.

Q. What has become of that money? A. I presume it was refused, and it is in the treasury of the Central Pacific or the Southern Pacific Company.

Q. Do you know to whom the tender was made?

MR. LEZINSKY: Did you make the tender? A. I did not.

Q. Then you are not competent to testify to it. A. I was about to remark the same thing.

MR. DUNN: As I understood Colonel Haymond, he said the tender had been made to the Attorney-General, or to my attorney, Mr. Delmas.

MR. LEZINSKY: Who was the Attorney-General?

MR. DUNN: Mr. Marshall. I think the record will show the difference between the tender in 1883 and 1884. There was no order of Court that the money should be paid over. In the other cases there was an order of Court that the money should be paid into the State Treasury.

MR. SALOMON: Wasn't the tender made to your representative?

MR. DUNN: No, sir.

MR. HYDE: Mr. Haymond made the statement Saturday that he took the money into Court. I think that this whole proceeding is uncalled for at this time. If it is the intention to continue this case to the end of the session, let us go on as we are doing. If it is intended by the committee to do something else, I move we dismiss this line of proceeding and take up the proper business of this meeting.

MR. DIBBLE: Were you subpoenaed, Mr. Ryan? A. No, sir; I was told there was a subpoena out for me.

MR. HYDE: I move that the committee go right now to the charges made by Mr. Dunn, regarding the falsification of the records made in the Circuit Court; that will take us all of this night.

MR. JOHNSON: Do you know what per cent was paid on the fences, railroad bed, rails, and rolling stock for 1884? A. I think 60 per cent.

Q. 50; wasn't it? A. 60; I think.

Q. 60 for 1883? A. I think 60 for 1883.

Q. How much for 1884? A. I think 60.

MR. CROSS: My understanding of this was—there is an averment in regard to the taxes on the railroad property—the railroad company claims that the method of assessment does not do justice to them, and the officers of the State claim that it does. This is an investigation of that question.

MR. DIBBLE: I suppose Mr. Dunn has a tabulated statement?

MR. CROSS: His records don't show it at all. All those properties in the different counties so covered by these mortgages—the Controller's reports show that last year there was assessed to the mortgagee \$145,000,000; and that the total value of real estate subject to mortgage was \$184,000,000; showing that of all the property mortgaged more than three quarters of the taxes were assessed to the mortgagees, and less than one fourth to the owners of the legal title. I don't say it is a fault. All I claim is that if that is good law for other land owners, it is good law for the Central Pacific Railroad Company.

MR. DUNN: Didn't you vote for that article?

MR. CROSS: Yes, sir; and at the time I supposed I knew what I was doing; but I found out since that I made a mistake.

MR. DIBBLE: Is there any other question to ask this witness?

MR. LEZINSKY: In the year 1886, when the answer was filed in the cases involving the taxes of 1885, you swore to that answer, did you not? Did you swear to the answer? [Showing paper to the witness.] A. You have not read it, sir.

Q. It was sworn to before you? A. Yes, sir.

Q. Well, you appeared, Mr. Ryan, when the assessment for that year was made?

MR. DIBBLE: You administered the oath to somebody? A. It was sworn to before me as a Notary Public by E. H. Miller, Jr.

MR. LEZINSKY: When the assessment for that year was made, did you appear before the State Board of Equalization? A. For every year from 1881 to 1888, inclusive, I have appeared before them every year.

Q. Did you furnish them with a statement for each of those years; did you furnish the State Board of Equalization with a statement of the assessments by the local Assessors; of the assessments made upon fences and steamboats belonging to these various corporations? A. No, sir.

Q. As to steamers, did you, or did you for any of those years? A. The steamers were furnished under their proper heads, under the forms adopted by the State Board of Equalization, showing other property assessable by the local Assessors.

Q. And in that was the value placed upon the steamers? A. Because it was required by the form.

MR. CROSS: Required by the statutes, too.

MR. LEZINSKY: Allow me to examine the witness. Do you know whether or not there was any discussion in the Board of Equalization when the assessments were made for the years 1883 and 1884, as to whether or not the value of the steamers should be included in the assessments made for those years upon the property of the railroad corporations? A. In all my experience as tax agent—

MR. CROSS: I object to that question, because the statute adopted March 9, 1883, specifically provided that that thing should be done. A. In all of my experience as tax agent I have never been admitted into the State Board of Equalization rooms during the time when they were making any assessments of the companies operated and controlled by the Central Pacific Company.

MR. DIBBLE: The question was whether there was any discussion? A. You asked me at the time the assessment was made.

MR. LEZINSKY: During the time the matter was under consideration?

MR. DUNN: Pardon me. During the time you appeared before the Board, representing these companies? A. I have no recollection now of any discussion relative to the steamers; if I heard it at the time, it has escaped my memory since.

MR. LEZINSKY: You are afflicted with that common failing so general with railroad officials.

MR. DIBBLE: Please omit those kind of remarks.

MR. DUNN: Now, do you remember the Supreme Court of this State, in June, 1883, that they determined that the steamers should be assessed by the local Assessors? A. I know that, sir.

Q. You know that? A. Yes, sir.

Q. Secondly, when the State Board of Equalization required you to make a value placed upon the steamers, of course you complied with the request? A. Yes, sir. As I understand it, Mr. Dunn, the form under the statute requires it, from the fact that it is necessary for the Board to be acquainted with the amount of property assessed in this State by the local Assessors, so as to make the deduction from the total value of roadbed and rolling stock, and get your proper value of the plant.

MR. DUNN: Yes; that is entirely correct.

MR. DIBBLE: Does any member of the committee desire to ask any question of this witness?

MR. CROSS: I will ask permission of Mr. Ryan to file this tabulated statement, so that the members of the committee can have access to it.

MR. DIBBLE: Do you state that this is correct?

THE WITNESS: Yes; I state that it is correct.

MR. DIBBLE: The stenographer will file this as an exhibit handed in by this witness.

MR. DUNN: Now, in your tabulated statement of the total amount of taxes paid, that includes State, county, and municipal, road district, and school district, and all taxes paid by the company under all forms? A. It is all set forth in detail as to what the character of the taxes are.

Q. It covers everything? A. It covers everything; yes, sir.

MR. CROSS: Now, in the statement made by Mr. Dunn lately before the joint committee, there was some question there as to whether the railroad had, at the time stated, paid the taxes to San Mateo County. Mr. Dunn stated that he had received a dispatch that the taxes had been paid, but he didn't believe they were entered as paid of that date. In full explanation of that matter we present two documents, signed by Rhodes & Barstow, showing that the moneys were paid on the date the dispatch was signed, and here is the original receipt signed by the attorneys, that being the ordinary case where the attorneys receive the money, and then here is the receipt of Mr. Barstow at a subsequent date, showing that the money was paid to the attorney of the State before the dispatch was sent.

MR. DIBBLE: Do you offer this through Mr. Ryan? A. Yes, sir.

Q. Are you acquainted, of your own knowledge, with the contents of these documents? A. Yes, sir.

Q. Do you state them to be true? A. Yes, sir, to the best of my knowledge and belief. I did not handle the moneys, but here are the signatures of these parties. The San Mateo County taxes for 1881-82 were paid twice; and here are the vouchers from the Secretaries themselves showing that fact.

MR. HYDE: Are those original papers? A. Yes, sir.

MR. DIBBLE: Let them be filed and marked by the stenographer.

MR. CROSS: We will ask permission to withdraw them in the future.

MR. DIBBLE: Let them be left in charge of the stenographer until copies are made, and the vouchers will then be returned to you. A. Very well. Here is the agreement between the County of San Mateo, through its Board of Supervisors, with the Central Pacific Railroad, wherein they

state they have received for the year 1881 amounts making a total of \$14,846; in which they agree to pay one portion of it back.

MR. DIBBLE: That is introduced in evidence and will be returned to you when copies are made.

C. E. WILCOXON.

Called and sworn.

MR. LEZINSKY: You were a member of the State Board of Equalization, and Chairman of that Board since 1883, and have been ever since? Answer—Yes, sir.

Q. Now, during the proceedings of the Board of Equalization, while the matter of taxation of the various railroad corporations of this State was under consideration, was there any discussion in the Board as to the assessments to be made upon steamers belonging to these corporations; that is, when the taxes for the year 1883-84 were under consideration, and that was after the decision of the Supreme Court of this State wherein the Supreme Court had decided that the steamers should be assessed by the local Assessors, and were not subject to taxation by the State Board of Equalization? A. Yes, sir; it was discussed before the Board. We had no right to assess them.

Q. And in making the assessment did the Board designedly and willfully exclude from assessment the value of any steamers which belonged to these corporations? A. Yes, sir; we excluded everything of the kind, under the decision of the Supreme Court of this State the June before.

Q. Now, as to the valuation, as to the assessment concerning fences, during those years? A. There never was a foot of fences assessed. I asked Mr. Ryan, myself, in August, 1883. I said: "Mr. Ryan, are you assessed with any fences?" "No, sir," he says, "we are not." I says: "Why not?" He says: "We don't own them; we don't own the fences." I says: "Who does own the fences?" He says: "The ranchers own them." I said: "Who built those fences?" He says: "The railroad." I said: "The law compels you to build fences." He said: "Yes." I said: "For what purpose; isn't it for the purpose of protecting the road from stock?" Mr. Ryan said: "Certainly." I remember I asked him if the main reason was not for the purpose of preventing stock from trespassing upon the road and throwing the cars off the track; and he said he guessed I was right. It was publicly brought before the Board. Mr. Markley and the Secretary, and all the members, I believe, were present.

MR. JOHNSON: The decision was rendered in June, 1883—the sixth of June—in the case of the City of San Francisco against the State Board of Equalization. How long after that did you sit as an assessing Board? A. In August following.

Q. Then he knew what this decision was that steamers were not to be assessed? A. Yes, sir; Mr. Markley and Mr. Maslin were down there at the time.

Q. And you say for 1883 neither steamers nor fences were assessed? A. No, sir; not as much as a skiff, let alone a steamer.

MR. LEZINSKY: And in making the assessment at that time the findings in what is known as the Santa Clara case had been prepared and filed? A. I couldn't say what case it was, but it was a case tried in June.

Q. I am not referring to the case tried in the Circuit Court, what is known as the Santa Clara case. The Court had adopted findings in which it found that the value of the fences had been included in the valuation by the old Board.

MR. JOHNSON: Haven't you the findings?

MR. LEZINSKY: Yes, sir. I simply desire to call his attention to it, and ask whether or not there was any discussion in the Board, as to whether or not, on account of the fact having been found, the Board should put itself on record as not including fences in its assessment? A. Yes, sir; we had that matter before the Board, and I talked with Mr. Gilsey, I remember distinctly, at Shasta. I asked the Assessor if he didn't assess the fences, and he said that we had assessed them, and I told him no; that the law laid down what we should assess.

MR. JOHNSON: Have the steamers or fences been assessed by the State Board of Equalization since 1882? A. No, sir.

Q. They have not been? A. No, sir; they have not been.

MR. LEZINSKY: Not only they have not been assessed, but the Board willfully and designedly excluded them from the assessment? A. Under the law we took the ground that we had no right to assess them, and we left them out designedly.

Q. That is, it was not overlooked, but you put yourselves—the Board put itself—on record as not including any such matter in the assessments? A. Yes, sir.

MR. CROSS: When do you claim, Mr. Lezinsky, that the Court decided there was something wrong about the fences being in there? Do you claim that happened in 1883?

MR. LEZINSKY: Yes, sir; not the Supreme Court of the United States, but the Circuit Court of the United States, sitting in the Santa Clara case.

Q. Doesn't the record of your office show whether the fences were included in the assessment or not? A. It don't show anything in that except five items: the franchise, the roadway, the rails, and rolling stock, and roadbed. The whole records show there was nothing of the kind assessed.

Q. You couldn't tell from the record whether the fence was assessed or not? A. We didn't include it in the value of the property. If you look at the last assessment—they state in the last assessment: "steamers, walls, or fences not included in this assessment."

MR. DIBBLE: You say there was an answer of that kind made?

MR. SALOMON: What did the assessment include? A. I can't answer.

Q. Wasn't it under discussion when you were speaking about the assessment in the Board—what they considered the assessment to be for—what part of it—was that not under discussion? A. I do not know but what it was. I don't know that it was ever put to a vote.

MR. LEZINSKY: In examining you was trying to get at the date when this discussion was had. Were the fences mentioned in your discussion in placing your valuation upon the railroad property? A. We talked that matter over and decided we had no right to assess the fences, and we never bothered about it any more.

Q. Wasn't it stated in these meetings of the Board that these fences were considered a part of the roadbed? A. It was stated that they were no part of the roadbed. There was not a dollar of it in the value of the roadbed. I took the width of the road, and the number of miles, and we would soon settle how many acres there were. I valued the acres for the purpose for which they were intended, and then we would ascertain about what it cost to grade the road, the number of tons of iron or of steel it took per mile, and the number of kegs of nails or knuckles, and everything of that kind; put it all down, and then figured up the cost.

MR. JOHNSON: In making your assessment—the State Board of Equaliza-

tion—you entered on your books what you assessed; you don't enter what you don't assess, do you? A. No, sir.

Q. You just simply enter what you do assess? A. Yes, sir; we enter nothing we don't assess.

MR. JOHNSON: Certainly.

MR. CROSS: You simply enter what pertains to the roadway as a roadway? A. Yes, sir.

MR. LEZINSKY: In making this assessment, when you arrived at these valuations—in making the computation, which was a computation to arrive at these assessments—was there ever any valuation placed upon any Federal franchise, or the valuation of any Federal franchise included in the amounts which were the amounts fixed upon as the valuation of these roads? A. I always so understood it, until 1888, that we assessed the franchise.

Q. I ask you as to the Federal franchise? A. I don't know. I don't recollect of that matter of being before the Board; some of the balance of the members may remember it.

MR. DIBBLE: Your statement is that they always did assess franchises up to this last year? A. Yes, sir; up to the last year.

MR. LEZINSKY: Did you assess one or more for each road? A. I don't think they assessed but one.

Q. Was that understood to be the State franchise or the Federal franchise? A. I could not answer that question.

Q. In the case of the Northern Railway Company, the San Pablo and Tulare Railway Company, and the California Pacific, they only had, they only could, under any construction, have a franchise from the State, because they had nothing to do with the United States whatever, so that in those cases the only franchises they held were State franchises. Isn't that a fact? And those were the only franchises that could be taken into consideration? A. As far as I am concerned I took the franchise on all the roads.

Q. If there was only one franchise considered, was their decision that by that franchise it was intended to assess the Federal franchise or the State franchise? A. I don't know anything about that.

MR. HALL: Several of the roads had no Federal franchise? A. I don't recollect of ever taking any more than one franchise in any one road.

MR. LEZINSKY: There was not more than one franchise taken for any one road? A. That is all.

MR. CROSS: Do you know anything about this law that where a corporation having a Federal franchise or State franchise is lawfully consolidated with another road not having a Federal franchise that the Federal franchise then becomes applicable to both the roads? A. No, sir; I don't know anything about that.

Q. Has the Board ever paid any attention to this decision that held that where, by the statute of the State, one road is exempt from taxation and that road is lawfully consolidated with another not exempt from taxation that then the law applies to both roads? A. I don't recollect.

Q. Isn't this the fact about the assessment of these roads from year to year, that you require each company to send in a statement stating the total receipts and the total expenditures, according to the statutory provisions? A. Yes, sir.

Q. Then haven't you pursued about this course: you would fix the net profits of the road, then you would say that as a basis for taxes the company should be allowed such a profit, and you would divide the entire profit by the profit you were willing to allow on one dollar, and the result

was the basis for assessment purposes? A. I don't think I figured it that way.

Q. Hasn't that been the usual method? A. I can't answer for the balance.

Q. Did you ever, as a Board, place a separate valuation upon any item of the property of railroad corporations? A. I did, in making my calculations?

Q. Did anything of the kind ever appear in the minutes of the Board? A. No, sir.

Q. So that as far as the Board's action is concerned, there was no assessment put on any particular kind of property; it was simply an assessment upon the value of the entire property? A. As I say, I figured the roadway.

Q. I asked what the Board did, as a Board? A. I cannot answer for Mr. Markley or Mr. Dunn, or any other member.

Q. Your proceedings were recorded? A. Yes, sir.

Q. And those records will show all the votes taken in the Board? A. Yes, sir; they will show how every man voted.

Q. It shows the official action of the Board? A. Yes, sir.

Q. Now, then, is there anything on your records, as the official acts of the Board, to show whether you did or did not assess steamboats or fences? A. Yes, sir.

Q. What is there to show it? A. Last August it shows that; but that is the first time we ever put it down.

Q. That is the first time you ever found out the difficulty? A. About steamers? No, sir; we never assess steamers, because, as I said here at the time, I considered we were under that decision of the Supreme Court; I don't know whether it was the Supreme Court or the Circuit Court.

MR. LEZINSKY: The State of California? A. They decided we had no right to assess the boats.

MR. CROSS: Did the State Board issue any instructions to the local Boards about assessing? A. Yes, sir; I guess they did.

Q. Did the State Board ever instruct the local Boards to assess the ferryboats of the Central and Southern Pacific Company, or ever instruct the local Boards to assess the fences along the lines of any of those roads? A. I don't know we ever put it in black and white.

Q. Did you ever instruct them? A. Yes, sir.

Q. By what means? A. By talking to them.

Q. You have sent out from year to year a circular of instructions? A. Yes, sir; I think so.

Q. In this circular has there ever been any instruction as to the assessing of steamers, or ferryboats, or fences? A. Mr. Maslin can tell more about it than I can.

MR. DUNN: In sending our statement relative to assessment, did we ever tell the Assessors to assess goats and hogs, or anything of that kind? A. No, sir.

Q. Did we ever go into details in any of these matters? A. No, sir.

MR. CROSS: Haven't you sent out instructions about the way to assess live stock? A. No, sir; not by our Board.

Q. Well, there was by the previous Board? A. I don't know anything about that.

Q. Has the State Board anything to do with the assessing of goats and hogs? A. No, sir.

Q. With the matter of railroad taxes they did have something to do directly? A. About the railroad taxes?

Q. About the railroad taxes they had something to do? A. Do you mean the local Assessors?

Q. I am speaking about the subject of railroad taxes and the State Board. A. By the State Board?

Q. Yes, sir. A. Well, I just told you that we did.

L. C. MOREHOUSE.

Called and sworn.

MR. LEZINSKY: Mr. Morehouse, you have been since 1883—since January, 1883—a member of the State Board of Equalization, have you not, sir? Answer—Yes, sir.

Q. Now, I will ask you whether or not, in the matter of making up an assessment for the railroad corporations of this State, when that matter was under consideration, after the decision by the Supreme Court of this State in 1883, that steamboats belonging to these corporations were not matters or property subject to taxation by the State Board of Equalization, there was any discussion in the Board as to whether or not in making up the assessments for those companies the steamboats should be included in those assessments? A. No, sir; it didn't require any. There was some talk about it, but it did not require any discussion.

Q. Why was it there was no discussion required? A. Because it had been found that it was decided by the Courts that they were not assessable.

Q. Did the Board include in the assessment which it made the value of the steamers? A. No, sir.

Q. In making up their assessment? A. I say no in one way—any more than what value they would have had to the railroad. They were separately assessed. They might add to the value of the road.

Q. Did you include the value of the steamers any more than you would include the value of a block of ground in San Francisco? A. No, sir; not any more than the value it would lend to the other property.

MR. DIBBLE: Did you, in assessing the value of the line of road, the roadbed, and so forth, take into consideration the value of these steamers? A. I speak for myself, now, not for the Board; that I took into consideration its ability to earn money and its connections in all respects, of course.

Q. Did you add in your mind to the value of the road, the value of these steamers as applied to the road? A. No, sir; not specifically.

MR. HYDE: Did the Board? A. I think not, sir.

MR. LEZINSKY: What you have reference to is the value you would place upon the franchise? A. In arriving at its value all those things go to the correct value.

Q. That would come in particularly under the head of franchise? A. It might in one man's mind, and in another it might not be that way. Technically it might possibly be correct.

Q. Now, didn't the Board always require a statement of the value of the steamers by the local Assessors? A. From the companies?

Q. Yes, sir. A. From the local Assessors?

Q. Yes, sir. A. Yes, sir.

Q. Didn't the Board deduct then in its computation the value of these steamers? A. That would be a very hard question to answer. Mr. Dunn might figure in one way and I might figure in another. When we got done with the figuring we generally valued the road at what we considered it worth. I guess you can't mention any proposition that we didn't figure

upon. I wish to state that you could not trim us down to any particular line of figuring to arrive at a value. I say that for myself and for the entire Board.

MR. DUNN: The Central Pacific Railroad Company was worth \$20,000,000; we said the local Assessors have assessed a portion of this probably, which it is their duty to assess, for \$4,000,000. Providing we were intending to assess the entire road for \$20,000,000, we would say, "Here is \$4,000,000 been assessed by the local Assessors," and then we would assess it for \$16,000,000.

Q. Providing you had intended to assess it at \$20,000,000 and you found there was \$4,000,000 assessed by the local Assessors, what then would be your assessment? A. We always talked those things over. We talked over the matter of what the property was assessed for throughout the State. In a case of that kind, as you say, we would have assessed it for \$16,000,000.

MR. JOHNSON: Did the Board know, since you have been a member of it, that it was illegal to assess fences? A. Yes, sir.

Q. Did you, as a Board, assess steamboats and fences? A. As steamboats and fences, no.

MR. DIBBLE: How did you arrive at the mileage, the assessment per mile: by taking the total valuation and deducting the assessment in the counties and then deducting the total valuation from the number of miles? A. No, sir; it would not be any use for one man to value a horse because he weighed twelve hundred pounds. I might sit down with a pencil and figure in that way, and Mr. Dunn might figure in another way. We took all the evidence we could get hold of, and from all the information we could get together, knowing what they were assessed by the local Assessors, and what the income was from the road, and what the prospects were in the future, we placed a value upon the road as a whole, but we assessed it in accordance with the language of the Constitution. We assessed the franchise, the road, the roadbed, the rails, and the rolling stock.

Q. How did you segregate those items? A. We didn't segregate them, under instructions. We wanted to do it, but we were instructed by the Attorney-General and associate counsel not to do it. If there was any fence included in the franchise it was assessed. If there was any fence in the roadway it was assessed. If that language includes fences it was assessed. But we didn't intend to assess fences as fences, or steamers as steamers. We followed the language of the Constitution in assessing the property strictly, and assessed those five things distinctly.

MR. LEZINSKY: In making your computation of the—of a mile of road, did you include the value of the fences as a part of that mile of road? A. No, sir.

Q. Added to the other? A. No, sir.

MR. DIBBLE: Did you include the fences in your assessment of the total value of the road? A. No, sir; not more than—if the road was run through a good country, with good land on each side, and a good five-board fence, the Board, of course, took it into consideration as being worth more.

Q. If the night before the assessment the steamers had been blown up, would that have made any difference in the value of the road? A. I think it would have had some effect, perhaps, on the earning capacity of the road; it might affect the value of the road.

MR. SALOMON: Supposing the road were not fenced at all, would it be considered of less value? A. Unless it was carried to an extent that it greatly decreased the value of the road. I think we should and did intend to use all the judgment we had in the matter; taking the whole property and assessing it for what it was worth.

MR. LEZINSKY: Now you have made the statement, and it is true, is it not, that when you made this assessment you had before you the assessments made by the local Assessors? A. In most cases, yes, sir. For that year we did; for the year previous, and I guess generally, we had them for every year.

Q. And your design was, and your act was, in making up these assessments to exclude from the assessment you made, or from any computation you should make, and to deduct such an amount from the total value as would equal the amount of property assessed by the local Assessors? A. I don't know that I can say yes to that question. You might figure it out that way. We considered their property was worth so much. We knew how much their land was assessed for; we knew what the steamers were assessed for, and the roundhouses, and so forth. We knew that went to make a grand total for the railroad, and while we didn't sit down and deliberately deduct that in all cases, it did cut a figure in the value of the road.

Q. Did you take into consideration the value of the steamers any more than you did the value of the roundhouses or the value of other property of that character? A. I should not judge so.

MR. CROSS: Under the law you required a statement every year of the gross earnings of the road in this State? A. Yes, sir.

Q. And also of the cost of operating the same? A. Yes, sir.

Q. Now was that one element in enabling you to determine the value of the property? A. Sometimes I thought yes, and other times I thought no. It was a very difficult thing to get at. We figured it in all sorts of ways. We have sat up nights and figured it, and we have figured over Sundays and every other time.

Q. You tried to take a very broad view of the subject? A. Yes, sir.

Q. In assessing any property which is productive its productiveness is one of the determining elements of its value? A. Yes, sir.

Q. Your Board considered that? A. Yes, sir.

Q. Did the statement of the amounts earned by the respective companies include the amounts received from carrying passengers on their ferryboats? A. I believe that there was no separate return made for ferry service. I believe it was gross.

Q. Tickets are bought in San Francisco to go to New York? A. Yes, sir.

Q. Now, then, just as far as steamboat earnings entered into the profits of that road, in just so far they had their proportionate share of the effect in determining the value of the property? A. Yes, sir; not as steamers; we didn't specifically assess those steamers.

Q. Had the Board any knowledge as to the proportion of profit which the whole road made out of the ferryboats? A. Yes, sir; they often talked of it. I don't think you can mention any phase of that subject which was not talked over and discussed.

Q. Do you remember about what the annual profits of the system of road was? A. No, sir; I don't know.

Q. Have you any idea of what proportion— A. No, sir; I was ready to forget it at the end of the talk. We stuck to it very closely for about sixty days.

Q. Have you any idea of what proportion of the profits of the Southern Pacific Railroad Company were derived from its ferryboats? A. Well, I have a personal knowledge of some of these matters, living right there.

Q. And you take these matters into consideration as a member of the Board? A. Yes, sir, necessarily; I couldn't help it.

Q. What was your idea as to the proportion or amount of profits derived from the ferryboats? A. I couldn't tell you anything about that. I know I believed it to be a very important factor.

Q. Don't you know that it has amounted to from one quarter to one eighth of the entire profits of the system? A. I do not.

Q. In so far as the receipts from the ferries or profits from the ferries go to make up the profits of the road, in so far it becomes an element in determining their value as far as the question of property enters into the determination of value? A. The same as its connection with the Union Pacific, sir; anything that added to the value of the property—of course if you cut it off at the two ends—if you cut it off at Oakland, it would have had an effect, in my mind.

Q. So that these steamers did become an element in determining the value of the road as a whole? A. Necessarily; and they could not be excluded. But specifically, as steamers, we knew we did not assess them.

MR. LEZINSKY: I think that you don't express yourself, Mr. Morehouse, as you want to. Isn't it this— A. I am willing enough.

Q. Isn't it this: that you didn't include the value, or take into consideration the value of the fences, but you did take into consideration the increased advantage to the road? A. I think that is it.

Q. Having a ferry system at the other end of it by which it could get to San Francisco? A. Yes, sir.

Q. Whether those steamers were worth \$1 or whether they were worth \$100,000, made no difference? A. It was their ability to earn money.

Q. It made no difference as long as they were able to transfer passengers? A. No, sir.

Q. And you didn't take into consideration at all the value of the steamers, but simply that at the other end of the road there was a ferry system? A. Yes, sir.

MR. CROSS: Would the State Board of Equalization have assessed this property at the same price if it had been entirely without fences, the entire length? A. I think the fence matter cut a very small figure.

Q. About as small as the fences? A. Yes, sir; because I knew as a matter of fact that there are miles and miles that are not fenced at all; a large proportion of it.

MR. CROSS: Mr. Maslin is very familiar with this subject, and if he desires to ask any questions, I wish he would.

MR. DIBBLE: There is no objection to his asking any question he desires.

THE WITNESS: Mr. Maslin suggests to me a matter that we spoke about. The question was that if the steamers blew up would that make any difference in the assessment. It would not make any difference in the assessment for that year; but it would make a difference in the assessment for the next year. My answer should have been to that effect.

MR. HYDE: I want to ask you if you didn't make this correction of your testimony after talking to some outside person? A. Mr. Maslin, the Secretary of our Board, suggested it to me. I think he is right.

MR. SALOMON: You mean to say if there were no steamers running there it would reduce the value of the road? A. Yes, sir; because they had had the use of them.

Q. Each steamer cuts some figure in determining the value of the road? A. Yes, sir; the same as any other connection of the road.

CHARLES GILDEA.

Called and sworn.

MR. LEZINSKY: From January, 1883, you have been a member of the State Board of Equalization, have you not? Answer—Up to what time?

Q. Up to 1887? A. Yes, sir.

Q. From January 1, 1883, to January 1, 1887? A. Yes, sir.

Q. Or from January, 1883, to January, 1887? A. Yes, sir.

Q. Whatever the exact date might have been? A. Yes, sir.

Q. Now I will ask you, referring to the Board of which you were a member, while the matter of the assessment of the railroad corporations of this State for taxes for the years 1883, 1884, 1885, and 1886 were under consideration, but particularly the years 1883 and 1885, was there any discussion in the Board about deducting from the value of the assessment, or as to including in the value of the assessment, the steamers owned by these incorporations? A. As to including—

Q. Whether it should be included in your assessment or whether it should be deducted from the total value of your assessment? A. There was no question about including it.

Q. Wasn't there a question about deducting it; as to the fences and steamboats? A. As to the fences, I don't think so. There was a question about deducting—if I understand your question correctly there was no conception in the mind of any member of the Board that fences or steamboats could be assessed by the Board, and I think every member of the Board was clear upon that subject.

Q. And it was the design of the Board, so far as you knew, in making up the assessment to not take into consideration the value of any steamboats or any fences which these railroad corporations owned? Is that true? A. The only way in which we took into consideration the value of steamboats was in ascertaining how much the Assessor of the county in which those steamboats were, assessed the steamboats at; how much he assessed the roundhouses at; how much he assessed the local property, which each local Assessor had a right to assess. And we gathered that as far as it was possible for us to do, and deducted it from the total value of the road, as we deemed it; because they had been assessed already by the local Assessors and could not be again assessed by us.

MR. CROSS: Mr. Gildea, did the earnings of the road have anything to do with the value that you assessed upon the property? A. Undoubtedly, sir.

Q. That would be a proper element for an Assessor always to consider? A. Yes, sir; I think so. That is providing it is earning.

Q. Providing it is in an earning condition? A. Yes, sir; that is one of the necessary elements.

Q. Land which is being cultivated, you would take into consideration its earning capacity or productive capacity in assessing its value? A. It is not all the elements; it is one of the elements.

Q. I ask you whether or not you took that into consideration? A. Undoubtedly, sir.

Q. Did the earnings which were taken into consideration by the Board, as one of the elements of value, include the earnings of the ferryboats? A. I assume so, sir. I assumed, as I heard you reading the statements. It seems that that statement given by the railroad, under oath—I assumed that that statement was a correct statement of the earnings of the road, made to the Board each year; and of course that included what the steamboats earned, but I don't see how it was possible to segregate those earnings from the earnings of the road.

Q. No: because a ticket is sold from a point including the ferry and rail?
 A. Yes, sir; including both services. I don't think the company itself could segregate it.

Q. So that as far as the question of earnings entered into the question of value, whatever the steamboats earned were taken into consideration?

A. Yes, sir; the total earnings were taken into consideration.

Q. Had the Board any information, or had you any information, as to whether the ferries were a profitable part of the carrying trade of the railroad? A. I have just answered that we had no information as to—

Q. As to the exact amount? A. The amount the ferries earned—that is, the ferries themselves. I question if the company can determine that itself. They could determine the cost of the ferries and the service to Oakland or New York, but it would be an estimate. We had no knowledge of it.

Q. As a member of the Board you knew, I suppose, that there are large numbers of passengers carried over the ferries, a much larger number carried over the ferries and over the country adjacent than over the rest of the system? A. As an individual I have an idea of that kind.

Q. And your individual knowledge would be available to you as a member of the Board? A. Yes, sir.

Q. If you didn't use that good judgment and knowledge which you had as an individual you would not be doing yourself justice? A. No, sir.

MR. STORKE: I did not understand what the witness meant in reference to the earnings. Did you or did you not assess the railroad for what you considered its actual cash value? A. Assessors always assume to do that.

Q. In determining that actual cash value of this railroad did you include the earnings of the ferryboats? A. I have just stated—

Q. [Interrupting]: That as an element in arriving at your conclusion, did you include the earnings of the ferryboats? A. Yes, sir; undoubtedly, as I told you. I made that statement positively; and that was deducted from the total earnings, so that the Board did not assess, or could not assess, or had no idea of assessing them—and so far as the fences are concerned, I am very sure of that.

Q. In other words the Board did deduct from the assessment the supposed earnings of the steamboats? A. They got each year, as near as they possibly could, from the local Assessors, the total assessment placed upon the railroad property, which went to constitute the earnings of the road; whether it was steamboat earnings, roundhouses, or anything else, that the local Assessors had the right to assess. As I heard Mr. Morehouse testify, some members of the Board had one way of making out their rate of value, and other members had another way. But I think the total earnings of the road was largely an element that entered into the valuation of the road.

MR. JOHNSON: In assessing the road—what you call the assessing of the road—did you not include five things, namely, the franchise, the roadbed, the roadway, the rails, and the rolling stock? A. Yes, sir; as I understand it, there is nothing assessed excepting what is on the assessment roll; and the idea of getting parol testimony, or outside testimony, as to what is assessed, either by Courts or by this committee is, as I understand it, simply a waste of time.

Q. That is the suggestion I made. A. Yes, sir; and there is nothing else that can be assessed or a tax collected upon it without—I beg your pardon; I did not intend to obtrude my own views on the committee.

MR. CROSS: Now, Mr. Lezinsky has put this question: "Didn't you every year deduct from the assessment by the State Board what the local Boards had assessed?" Then he called attention to the assessment in 1883. In

1882 had the local Boards assessed the ferryboats? A. I am under the impression that there was a question of jurisdiction which was determined in 1883.

Q. In 1882? A. I desire to say another thing. Of course I don't know what the members of the Board determined in 1882, I was not then a member.

Q. Mr. Lezinsky has asked you this question: "Didn't you each year deduct from the assessment of the State Board everything that had been assessed by the County Boards, while you were a member, in 1883?" A. Yes, sir.

Q. In 1883 did you have before you returns showing that in 1882 steamboats had been assessed by the County Assessors, or Boards? Isn't it the fact that up to that time they had always been assessed by the State Board? Up to the time of the decision of the Supreme Court hadn't they been assessed by the State Board? [To Mr. Maslin]: Isn't that so, Mr. Maslin?

THE WITNESS: Mr. Maslin knows that matter much better than I do; so far as 1882 and 1883 are concerned.

Q. Everything that had been assessed by the local Boards in 1882, you didn't deduct for as assessed in 1883? A. The assessment of this State is made on the first Monday of March, at twelve o'clock, noon. The Assessors of the counties get through with the assessment roll on the first Monday in August—on the first Monday in July.

MR. STORKE: The County Supervisors begin to sit on the first Monday in July? A. I was endeavoring to answer Mr. Cross' question. Then the Board of Equalization of the county takes the assessment roll and goes through it until the fourth Monday in July. Now, then, all that is done before the State Board of Equalization sits as a Board to assess the railroad. And the assessment of the year, of that year, we calculate as far as we possibly can upon the property from the various information we have at hand.

Q. Can you say, or have you any recollection, that in your sitting of 1883, you had any reports or information that any local Board had assessed any ferryboats of the Central Pacific or Southern Pacific Companies? A. I could not, of my own recollection, now say. I have not been on the Board for two years. I have not consulted the records for two years, and I could not, of my personal knowledge, say.

JOHN P. DUNN.

MR. LEZINSKY: From January, 1883, up to the present time, you have been a member of the State Board of Equalization? Answer—Yes, sir; an ex officio member.

Q. Now I will ask you whether or not, when the matter of the assessment of the railroad corporations of this State was a matter of consideration before that Board for taxes for the year 1883-84, there was any discussion in the Board, or any action by the Board, as to the method of computation, and as to whether or not the value of the steamers owned by these companies should be included or deducted in the amount arrived at as the basis of assessment? A. Well, in answer to the question, I will say that when the Board met in August, 1883, they had before them the decision of the Supreme Court of this State that steamers were assessable by the local Assessors and not by the State Board of Equalization, and of course we did not include the steamers in our assessment. As to the

ences I remember distinctly, because I made the suggestion myself. A portion of the time during the time of the trial of the Santa Clara case I was in the Circuit Court at San Francisco, and I remember that Mr. Maslin, the Clerk of the Board, and Mr. Markley, discussed the matter with myself—at least I heard them—the findings in that case—some certain testimony that was given by two members of the Board, the Board in existence in 1881-82, that fences were assessed. And I said: "Don't let us not alone not assess fences, but let us purposely talk about it and determine it."

Q. And that was done? A. I know that I talked about it; I made that suggestion myself. My idea for it was this, that the records of the State Board of Equalization at no time showed that fences were assessed, and it was a surprise to us to find that it was possible to get testimony from anybody who had been a member of the Board to show that they had included in the right of way the fences. Such testimony was given by two of the old members, that they had included in the valuation of the roadway \$200 for fences.

Q. At the time of making these assessments you had before you the assessments made by the local Assessors for every year of property owned by the railroad company, which was for roundhouses and other property, depots, and so forth. Did or did not those assessments, or reports of assessments, by the local Assessors, include the assessment upon the steamers owned by these corporations? A. My recollection is that we received these statements of the valuation of this property by the local Assessors, in a majority of cases, from the railroad companies themselves, or from their tax agent, Mr. Ryan, or from somebody that would be requested to send it; that is my recollection.

Q. And you deducted from what you considered the total value of the road, or the total value of all their property, the amount that had been assessed to them by the local Assessors in making their assessment, did you not? A. Yes, sir. I asked the question of Mr. Morehouse, if we determined to place a valuation of \$20,000,000 on the railroad property—I think their property is worth that—and I then said that if the local Assessors had assessed them for \$4,000,000 I would vote to assess them for \$16,000,000, because \$4,000,000 had already been assessed.

Q. It was discussed and understood that if you arrived at \$20,000,000 as being the value of the road, that you didn't take into consideration as an element of that the value of the fences along the line of the road? A. As I say to you, I made the suggestion myself, and not alone was it talked about once, but it was talked about twenty times—about the findings in the Santa Clara case, showing that the fences were assessed. I made the suggestion because that testimony was in my mind, and I wanted to have it fixed that not alone did we not assess them, but that we had talked about it.

Q. And determined to exclude them in any valuation that you arrived at whatever? A. Yes, sir.

Mr. Cross: Were you a member of the State Board of Equalization? A. Yes, sir.

Q. Were you present whenever they met? A. I was there in 1883, 1884, 1885, 1886, and 1887. I think I was absent at the time the valuation was placed on the roads last year, but I think I was here when the matter came up for a second consideration.

Q. Was there any resolution or any official action ever taken by the Board by which it appeared that the fences were assessed? A. Not that I am aware of. That the fences were assessed—

Q. Yes, sir? A. Not that I am aware of.

Q. Was there any official action ever taken by the Board by which it appeared that the steamboats were assessed? A. Not any more than we would determine that we didn't assess the building on Fourth and Townsend Streets.

Q. Was it determined any more than that that you did not assess them? A. No, sir; no more than that.

Q. Did the Board ever, in its minutes, enter separately the values of any property of the company, or did it aggregate them all in one aggregation? A. It aggregated them since 1883, since I have been a member, in one sum.

Q. By the statute? A. By the Constitution.

Q. That is the way the assessing would appear by the records? A. Yes, sir; that is the way we did assess them.

Q. Now, then, as to whether they did or did not assess the fences or steamers, your judgment turns upon the point that you talked the matter over with individual members, that it ought not to be done, and they concurred in your views as far as you were able to ascertain them? A. Yes, sir.

Q. Did the earnings of these various roads enter into the determination—did it in any degree enter into the determination—of what they should be assessed at? A. It did sometimes, in my mind, and sometimes there were other elements.

Q. Did that enter into it as one of the elements? A. Yes, sir.

Q. That is, in assessing the different roads in the State, if you found one road was not paying expenses you would not assess that as high as another road of the same length that was paying a handsome dividend? A. No, sir.

Q. Did the earnings of the road, or the profits of the road which you so took into consideration, include the earnings and profits of the ferryboats? A. It included the earnings of the ferryboats, and the roundhouses, and all the property that went in to make up this valuation.

Q. Does a roundhouse earn anything? A. No; we didn't find in the findings that the roundhouses were assessed. They go to the business of the road; they are a part of the property.

Q. Does a ferryboat earn anything? A. It is a part of the property.

Q. Does it earn anything? A. It is a part of the property. It wouldn't earn anything if it stopped at the Oakland Mole—

Q. [Interrupting]: And the earnings of the road would have been very much diminished if there had been no ferryboat there? A. Yes, sir.

Q. All those things entered into the question of earnings and profits? A. Yes, sir.

Q. And the earnings and profits entered into the determination of the assessment valuation? A. They did, to some extent.

Q. They did enter into it? A. Yes, sir; to some extent.

MR. JOHNSON: I will ask you whether or not you were ever subpoenaed before the Circuit Court of the United States, in any of these pending tax cases? A. No, sir.

Q. Do you know of any member of the Board of Equalization that was ever before the Circuit Court? A. Since 1883?

Q. Yes, sir? A. No, sir.

MR. DIBBLE: Have any of the cases been tried since 1883? A. Yes, sir.

Q. These were all submitted on testimony taken prior to that time? A. Yes, sir.

MR. JOHNSON: How then did they arrive at these findings in these cases? A. So far as I know they arrived at the findings by offering in evidence the

testimony taken in the Santa Clara case, that showed that the fences were assessed.

Q. How was that done? A. By stipulation, as I understand it.

Q. Who made these stipulations? A. I believe they were made by Mr. Marshall and by Mr. Harvey Brown, in most instances.

E. W. MASLIN.

Called and sworn.

MR. CROSS: I would like to state that the railroad tax cases were decided in the Circuit Court in September, 1882.

MR. DIBBLE: You are the Secretary of the State Board of Equalization? Answer—Yes, sir.

Q. How long have you been Secretary of the Board? A. Since its inception.

MR. CROSS: Do I understand you to claim, General Johnson, that the Circuit Court passed upon the question of the fact of the fences being in the assessment?

MR. JOHNSON: Yes, sir; these findings, which include fences and steamers, in 1883, 1884, and 1885.

MR. CROSS: The fence question had not been decided at that time?

MR. JOHNSON: No, sir; the fence question was not decided until 1886.

MR. CROSS: And yet these gentlemen seem to be testifying that they did not assess fences, and the decision did not come until 1886.

MR. LEZINSKY: No, sir; that is not so.

Q. When the matter of assessment for 1883, 1884, and 1885, and so forth, was under consideration by the Board, was there any discussion as to whether or not the value of the steamers or fences should be considered; what was done about that matter? A. If you will permit me, I would like to make a statement a little anterior to that, so as to bring it up to what this present Board acted upon. They are a little confused about what are called the ferries. At some meeting of the Board of Equalization Mr. Black Ryan stated that the ferries which carried the passengers from the foot of Market Street across was a private corporation. That the question was as to the earnings of the Central Pacific Railroad, and it was claimed that those earnings were ferry earnings, and not therefore a part of the railroad earnings. That was an important statement. The railroad company made a report to the State Board of Equalization in 1882, in which it described the Central Pacific Railroad Company as running to the foot of the ferry slip with the steamers Thoroughfare and Transit, which are freight boats alone, thence across the waters of the Bay of San Francisco with the steamers Transit and Thoroughfare to the end of the mole at Oakland wharf. Those are the steamers which entered into the discussions about which steamers were assessed. The State Board of Equalization, in assessing those steamers in 1882, did not consider the passenger ferry steamers, and they have never entered into the computation of the State Board of Equalization from that time to this. And that is the description on the record. Now, I was the author of the Act of 1883, and the word "steamers" was put in that because the railroad company, through Mr. Ryan, or through their returns, assented to the assessment of the Transit and Thoroughfare. Then we heard—Mr. Markley and myself heard the discussion in the Circuit Court in reference to the fences. In 1883, the Supreme Court of this State having decided that steamers were not a part of our duty to assess, the Board, as Mr. Dunn correctly said, determined

that the fences or the steamers neither should enter into the computation of the value of the road. I have no distinct recollection that we had a discussion as to it after that, because it was assumed, until the present Board came in, that it was so understood. And since that time it has been assumed by myself and by the Board that steamers were not to be assessed, or fences. This year we made a record of it, previous years we never did.

MR. LEZINSKY: This year they paid their taxes? A. No.

Q. Why did you make the record of it this year when you didn't make it in other years? A. On account of some new light thrown by litigation as to the unity of different portions of the road. In 1881 we assessed the rolling stock separately; then under the advise of Mr. Marshall and his associates we assessed it as a unit. The question came up whether the franchise might be illegal, and as we didn't want to incorporate the franchise in the unit assessment—

MR. DUNN [Interrupting]: Wasn't the reason, so far as you remember, that we put in the record of this year that we did not assess fences and steamers, largely due to the fact that in the face of what we had done in the previous years, the stipulation put in the record made up in the Circuit Court showed that we did those things? A. As stated by you, that you wanted it done in order to meet just such a future question.

MR. LEZINSKY: The proceedings for the year 1883-84, however, in arriving at the valuation, were exactly the same as what the proceedings were by which the assessment was arrived at last year; is that not so? A. Well, that was a different Board.

Q. I know; but I mean the method pursued was about the same? A. Yes, sir; the method is something like this, if you will allow me to tell it to you, I can clear up some little difficulties about the returns of the Assessors of their property. The Board very kindly permitted me to make up such orders and such forms as we desired from the railroad. I took Poor's Manual and I found out, comparing the net earnings of the railroad, what we think are the net earnings of each road. About three or four years ago, thinking that it would be of use to the Board, I put on the back records which the Assessors made to the Board a statement of the valuation of the property of all the railroads which they assessed. Now, when the Board meets, those questions and those facts are presented to them. They are open to their inspection, and each member of the Board takes those facts and looks them over, analyzes them, digests them in his mind, and when we meet, one member of the Board says: "I move that the Central Pacific Railroad Company be assessed at a certain sum;" another member says: "I amend that by moving that it be assessed at another sum." And so motions are put until we have agreed, by a majority of the vote, that the assessment shall be a certain sum.

MR. DIBBLE: A round sum? A. Yes, sir; a round sum.

Q. For the entire mileage? A. Yes, sir; for the franchise, roadbed, roadway, and rolling stock and rails. Now then, as to the apportionment, that is a clearly clerical matter, which I do. The law says that a particular sum shall be apportioned to each county in the same proportion that the miles in the county bears to the total mileage. So it is purely clerical; therefore, if Mr. Ryan says that San Francisco has ten miles we accept that and give her ten six hundred and twentieths of the total assessment. As a matter of fact San Francisco might have only two miles, but as we have no means of engineering it, we give her ten miles.

MR. CROSS: The map of the roadway filed in different counties, as required by law, would show the mileage? A. No, sir; because they are continually extending their road.

Q. They have to file a map whenever they extend it in each county? A. I suppose so: but now can I tell by a map whether there was two miles or ten. There was quite a contest between Fresno and Tulare, when there was only about two or three hundred yards difference: and yet we had to correct it.

Q. And yet before they build their road they have to file the map? A. Yes, sir.

Q. So that if Mr. Ryan made any misstatements the record will show them? A. Yes, sir: he makes them under oath. It is one of those things we assume they are telling the truth about. There is nothing to be gained or lost in stating the mileage.

MR. DIBBLE: They have been assessed in a sum total? A. Yes, sir.

Q. And it does not make any difference whether they are assessed one way or the other? A. No, sir.

MR. JOHNSON: Have you ever been subpoenaed as a witness before the United States Circuit Court since 1883 in the railroad tax cases? A. Yes, sir.

Q. In what year? A. My impression is that I was subpoenaed in the summer of 1883.

Q. Were you a witness there? A. I was.

Q. Did you testify? A. Yes, sir.

Q. Did you testify in any other year? A. No, sir.

Q. Were you subpoenaed in any other year? A. Yes, sir.

Q. What year? A. My impression is that it was the same year; no, it must have been in 1882. I was subpoenaed to go to Tulare County before Judge Cross.

Q. I am asking you since the commencement of 1883? A. No, sir: that was the only time.

Q. Only once? A. Yes, sir.

Q. Did you give in your testimony in the case? A. Yes, sir.

Q. Did you furnish a statement at any time as to whether the fences were assessed or whether the steamers were assessed? A. Not at that time.

MR. DIBBLE: At anytime subsequent to that time? A. Yes, sir.

MR. JOHNSON: What year was that? A. My recollection is a little indistinct. I was informed by some one, whom I can't say, that the bill of exceptions, or cases to be taken to the Supreme Court, were to be taken up on an affidavit of mine as to the assessment on the steamers and fences. I heard that, and somebody asked me if I had made the statement. On one occasion Mr. Fred. Marshall presented an affidavit to me, which was too precise to suit me, in respect to the fences. I was sure about the steamers but not about the fences.

Q. Sure, how? A. I was sure that the Board had not assessed steamers, but the assessment about fences was not so distinct in my mind as to enable me to swear on this particular occasion that they had not assessed the fences. I wanted to be a little more certain as to the statement. I took his affidavit and his statement and prepared one and gave it to him.

Q. What was the purport of that? A. The purport of it was that the Board had not assessed steamers.

Q. That was for the taxes of what year? A. That I cannot say. It was intended to affect the minds of the attorneys on both sides in making up their bills of exceptions before the Supreme Court.

Q. You were down in San Francisco in 1882? A. Yes, sir.

Q. Of course the taxes of 1882 were not sued for until 1883? A. No, sir.

Q. You say you were down there in 1883: then you must have been there

for the taxes of 1882? A. Yes, sir; it was when Mr. Marshall and Mr. Delmas and Rhodes & Barstow were the attorneys before Judge Field.

Q. This written statement that you have made must have been made in 1884 for the taxes of 1883? A. It must have been a year or two subsequent to that.

Q. If the record was here to refresh your memory——

MR. DIBBLE [Interrupting]: Have you got that statement of Mr. Maslin's?

MR. CROSS: It is after this portion of the findings which is covered by red ink.

THE WITNESS: I don't understand what you mean.

Q. It seems that the bill of exceptions as originally presented, contained quite an extensive finding about the fences. A question arose as to whether that finding was correct or not. Now the attorneys said that Mr. Maslin, the Secretary of the Board, had attended to these matters, and had watched them very closely, and he would expect Mr. Maslin to state in regard to that and present it to Judge Sawyer. Then this document of which you speak was drawn by agreement of the attorneys of the respective parties, and presented to Judge Sawyer, and on that he modified the findings? A. I don't know what was done with it.

Q. Did you understand at the time that was the purpose? A. No, sir; I didn't understand that he was going to make the finding on my affidavit. Really, I was not very clear what he was going to do. I supposed that the Central Pacific Railroad attorneys believed that we had assessed steamers, and Mr. Haymond said that if Mr. Maslin would testify or make an affidavit that the steamers were not assessed he would be governed by that. That was my understanding.

Q. And that affidavit was furnished with the purpose of determining, or to be used for the purpose of determining what should go into that finding? A. I don't know, sir.

Q. It was about that time that we settled those findings? A. Well, you see I don't charge my mind as to what Mr. Dunn does. I simply remember the occurrence, that they presented the affidavit to me, and I stated that it was not clear enough, and that I would write one myself.

Q. You don't recall now, if you ever knew, what the affidavit was to be used for? A. It was to be used for that purpose.

MR. DIBBLE: Why not call the attorneys? Mr. Brown was on one side and Mr. Marshall on the other.

MR. CROSS: I am informed that this matter was determined between Mr. Brown and Mr. Marshall.

MR. DUNN: The affidavit is not to be found in the papers.

MR. CROSS: It is stated by Mr. Baggett that it was rather in the form of a letter, and not in that of an affidavit. Mr. Baggett stated that it was a letter from Mr. Maslin.

MR. JOHNSON: I wish to refresh his memory, and ask him if he, in the tax of 1883—— A. [Interrupting] I said it was between a year and a half or two years after I testified, after 1883.

Q. After you testified in 1882—you testified in 1882 in the first place? A. In the Circuit Court I testified in 1883.

Q. See if that statement was not made about that time? [Showing paper.] A. I think it was subsequent to that; I can't say when it was exactly.

Q. Was it in pursuance of that stipulation? A. I don't know, sir; I never saw that stipulation.

MR. DIBBLE: The findings were in 1884; it must have been about that time? A. I can't state why it was done; I know they wanted me to make it, and I made it.

D. M. DELMAS.

Called and sworn.

MR. LEZINSKY: You, as the attorney for the Controller and attorney for the State, instituted or commenced the actions which are known as the tax cases, in the years 1883-4, did you not? Answer—I instituted a great many suits; I don't know whether those were included or not; the records will show.

Q. Here is the case of the Central Pacific Railroad Company? A. I don't know whether I commenced that or not.

Q. The complaint filed by W. T. Baggett and James A. Waymire, as the attorneys for the plaintiff; and thereafter there was a substitution of attorneys made.

MR. CROSS: You don't claim that Mr. Delmas commenced that?

MR. LEZINSKY: Mr. Delmas didn't commence the suit.

MR. HYDE: The record is the best evidence of that.

MR. LEZINSKY: Now, you were afterward substituted—after the institution of the cases—you were substituted as attorney for the Controller, in place of the attorneys who had instituted these actions.

MR. CROSS: What date is that?

MR. LEZINSKY: April 28, 1884. A. My recollection is, sir, that those suits, now that you refresh my mind, were commenced by the parties that you have named. The paper that you have shown me a moment ago recalls to my mind that after those suits were commenced, Mr. Dunn, as Controller, appointed me as his attorney in those cases. Whether the Court recognized that appointment and substituted me or not, I don't now recall. The records would show that, however

MR. CROSS: At any rate you proceeded in the cases? A. I don't think so.

MR. LEZINSKY: That is true of the cases of 1883. The cases of 1884 were instituted by yourself, were they not?

MR. CROSS: Do you mean the cases commenced in 1884?

MR. LEZINSKY: The cases of the railroad tax suits of 1884; what are known as the taxes of 1884.

MR. CROSS: You mean the taxes levied in 1884?

MR. LEZINSKY: Yes, sir.

THE WITNESS: This complaint which you hand me is filed February 26, 1885, and is doubtless for the taxes of 1884.

Q. And this suit was commenced by yourself? A. It so appears of record, sir.

Q. Now, after the institution of these suits the question arose between yourself and Mr. Marshall, the Attorney-General of the State, as to whether or not the control of the cases was in your hands or whether it was in the hands of the Attorney-General? A. Yes, sir.

MR. DUNN: Didn't the question come up in this form: as to whether the Controller had a right to substitute. Mr. Marshall objected to my right to substitute, and named Messrs. Waymire and Baggett, and the question came up as to whether you had a right to continue in the case? A. Yes, sir.

MR. LEZINSKY: Was there any determination of that question by the Circuit Court of California? A. The Circuit Court held, all along, that the Attorney-General was the master in those cases, and that he had the control of them, and could do what he pleased, which he did.

Q. Now, did you ever sign any stipulation concerning the testimony in these cases? A. No.

Q. Was ever any such stipulation presented to you? A. No.

Q. Were you ever consulted concerning the control of these cases? A. No, sir.

Q. Did you ever see the findings which were filed in these cases before they were signed and filed? A. No.

Q. Do you know what the reason for that was? A. No.

Q. Have you an opinion as to what the reason of that was? A. Yes, sir.

Q. Will you state it? A. My private opinion?

Q. Your private opinion. Was it that, so far as the railroad companies were concerned, they did not recognize you as being an attorney authorized to take any proceedings in connection with these cases? A. The Court did not recognize me as such.

Q. The Court did not recognize you as such? A. No, sir.

Q. And the Court had so declared itself? A. The Court declared that the Attorney-General was the representative of the State in those cases, and that he had the controlling power. I had no authority to do anything in the cases except by his leave and consent.

MR. DIBBLE: Did you take any part in the cases after the trial of the Santa Clara County case? A. None, whatever. In fact as I understand it, they were never tried.

Q. Well, judgment was entered? A. Yes, sir.

MR. LEZINSKY: In certain of these records it appears that a certain order which had been made and entered in the case on the seventeenth of December, 1885, recited that the proceedings—that the order was made on motion of the attorneys for the plaintiff. Did you make a motion to the Court that that order be amended, so that it should be properly stated that it was on motion of the Attorney-General, and that you had no connection with the motion whatever? A. What was the order, sir?

MR. CROSS: You might show it to the witness.

THE WITNESS: What was the order or judgment which purported to be made on my motion? My recollection of that matter, now that you mention it, is that there was a judgment entered, which upon its face recited that it was made on motion of attorneys for plaintiff. That is my recollection of it. The attorneys for the plaintiff at that time were the Attorney-General and myself.

MR. DIBBLE: Was that recital correct? A. It was not true; it was a false recital.

Q. Was it afterwards corrected? A. I think it was.

MR. CROSS: You wanted it to appear that you were in no manner responsible for those proceedings? A. I opposed the proceedings as far as I could.

MR. DUNN: Is it your recollection that it was amended? A. It was amended in one case, and in another case denied. The denial being, as I recollect it, that the motion was made after the term had lapsed. I was not aware—I didn't see any of these papers. They were all gotten up and filed in my absence, and it was by mere accident that it was called to my attention that these judgments recited that they had been entered on motion of the attorneys, which included myself. I at once filed an affidavit in the Circuit Court, or perhaps several affidavits, stating the fact that the record to that extent was incorrect.

MR. CROSS: That could not affect the result of the case in any way; it was a personal matter—that you didn't want it to appear in the matter? A. That was the object.

MR. JOHNSON: The taxes for what year was that? A. I don't recollect.

MR. LEZINSKY: It was 1884.

THE WITNESS: The record was corrected in some cases, and in some it

was denied, on the ground, as I recall it, that the term having lapsed the Court had no further power over its record.

MR. CROSS: That the Court could not amend its order after the term had expired in which the order was made. A. Precisely; in one or some cases the Court did. It was not a clerical error, because Mr. Haymond, representing the railroad, intended that notwithstanding the fact was that I did not concur in that motion, but opposed it, yet by a construction of law the Attorney-General having control of the case, he acted for all the attorneys, and controlled them all, whether they were willing or not.

Q. Did you ever know of a case before where it appeared in the record that any of the attorneys' names were dropped from the proceedings taken by the attorney who had control of that side of the case? A. I am not aware of any.

Q. Isn't it customary for the proceedings to take such course as the attorney who has control indicates, provided that the Court indorses his action? A. It is unquestionably a customary mode of procedure. But my opposition to this whole business of stipulation in the case, and of taking part payments, and of having judgment entered for a portion of the taxes, was so well known by all parties, that I deemed it unfair that the record should state that I concurred in those proceedings. The record would have been clearly veracious, if it had said, as it does not, that the motion was made by the Attorney-General.

Q. Is it customary to enter in the record the disagreements of counsel? A. I know nothing of such a custom.

Q. Did you ever hear of such a custom? A. I don't know anything about it.

Q. This is the only case that you know about it? A. Yes, sir.

Q. And it is customary for the attorney having the control of the case, if he chooses to do so, to conduct that side of the case? A. I don't know anything about the custom. In this case it was recognized that the proper course was to recite the truth. I never knew of attorneys disagreeing in any case.

MR. DIBBLE: They sometimes disagree and separate? A. Yes, sir.

Q. I see in this memorandum for judgment, they say that it shall be paid over to Mr. Marshall, one of the attorneys? A. One of the attorneys; yes, sir. They were very careful who they should pay the money to.

MR. JOHNSON: Had you anything to do with the making up of the records of 1883, 1884, and 1885, except simply filing the complaint for 1884, and afterwards you were superseded by the Attorney-General, Mr. Marshall? A. Nothing further.

Q. Then these records for 1883, 1884, and 1885 were made by the Attorney-General and the attorneys for the railroad? A. By whomsoever they were made, they were made up without the slightest participation, or slightest concurrence as to what was done, on my part. On the contrary I opposed the whole proceeding. I was opposed to all stipulations by which the State stipulated away what I considered its rights.

MR. CROSS: You argued some of the railroad tax cases before the Supreme Court at Washington? A. I argued the Santa Clara case.

Q. In that case wasn't there the same question argued—about the effect of fences being included or not included? A. Yes, sir.

Q. Did you make any statement to the Supreme Court as to whether or not the assessment of the right of way didn't include fences? A. My argument, sir, was printed. Have you a copy of it?

Q. I am simply asking you? A. The argument will best speak for itself.

Q. Have you a copy of it here? A. Not here.

Q. [To General Johnson]: Have you a copy of it, General Johnson?

MR. JOHNSON: Not here.

MR. CROSS: I am advised, I don't know how correctly, that the report is in the United States Supreme Reports, as appearing in the one hundred and eighteenth volume, which we have tried to find, and all copies seem to be absent from the State Library: that the reports of the case indicate there that he took the ground that the fences were included in the assessment. If it is so reported, is it correct? A. It is perfectly correct.

Q. I would like you to state that matter as far as you can.

MR. DIBBLE: Here is the record. Our attention was called to it in the Circuit Court-room the other day. This is the matter referred to by Mr. Haymond in speaking to our committee the other day.

THE WITNESS: In 1883 there came up for trial before the Circuit Court—Judge Field and Judge Sawyer—a number of these tax cases. There were a large number of attorneys—six or eight, possibly more. It was agreed that one case out of the number should be tried, fully tried: and it was agreed that one counsel should have the management of that case. I tried that and made the argument of it. At a meeting held by the various attorneys it was determined that the Santa Clara case should be that case, and that I should try that case and argue it. On the trial of that case—

MR. CROSS [Interrupting]: Let me ask you one thing right there: Was there any understanding that the determination of that case should have anything to do with the determination of other cases? A. No, sir. It was to be tried, and then the other cases. All evidence in that case was to be applied to the other cases, so far as applicable.

Q. It should be considered as taken in all the cases? A. The different assessment rolls applicable to each county, that is, the apportionment of assessment, should be put in each case.

Q. The evidence taken in that case should be considered as taken in each of the other cases, so far as applicable? A. Yes, sir.

MR. DIBBLE: That appears to have been subsequently stipulated in the other cases? A. In the trials of 1883.

Q. In the subsequent cases that were submitted upon stipulation? A. All those cases were in point of fact tried. What I mean to say is that the Santa Clara case was the case in which the whole evidence was to be given, and then in all the other cases merely those matters were to be put in evidence which differentiated them from the Santa Clara case; but they were all tried.

Q. So much evidence in the Santa Clara case as was applicable to the other cases was to be considered in the other cases? A. Yes, sir.

MR. CROSS: Which was a correct procedure? A. Yes, sir.

MR. DUNN: As far as the assessments made for 1883? A. Yes, sir; some cases were for 1881 and some for 1882. Cases were selected. Now, in the Santa Clara case, the railroad company called as witnesses two members of the Board of Equalization; if I recollect rightly, they were Mr. Drew and Mr. Dutton. These gentlemen stated under oath, or one of them did state positively, and the other not quite so positively, that in making up the assessment the roadway or roadbed—

MR. CROSS: Of the roadway? A. They had included the value of fences at the rate of \$300 per mile. When the cases were tried and argued, the question came up of settling the findings. The railroad company proposed a finding—

MR. CROSS: Was there evidence contradicting that evidence? A. None, sir.

Q. Then so far as the evidence went, that finding was supported by evidence? A. Yes, sir; if the evidence was admissible.

Q. And there was no conflicting evidence? A. Yes, sir.

Q. And it was based upon evidence, as we lawyers say? A. Yes, sir, if it was competent evidence; the railroad attorneys' proposed findings including that and many other things. Those findings were fully discussed. They were submitted to the various attorneys, who proposed amendments, and the settlement of those covered a period of several days, or perhaps weeks.

Q. Do you think that taking the——

MR. HYDE [Interrupting]: Why don't you let him make the statement of it?

MR. DIBBLE: Proceed, Mr. Delmas. A. As I have stated, the cases were as fully tried as the ability of counsel on both sides could try them. Findings were proposed by the railroad attorneys before the decision was announced by Judge Field. Those findings were submitted to the various attorneys for the people or for the various counties. Numerous amendments were proposed and those amendments were submitted to Judge Sawyer, to whom the power of settling the findings was delegated by Judge Field. Repeated interviews at his chambers were had, and finally the findings were settled by him as they appear now of record. In those findings there was a finding in accordance with the testimony of those two members of the Board of Equalization, to the effect and in substance that in making up the valuation of the roadway the Board of Equalization had taken into consideration the value of the fences along the road at the rate of \$300 a mile. That then became a part of the record, and became a topic of argument in the Supreme Court of the United States. The attorneys for the railroad, Judge Sanderson—I think neither Mr. Edmunds nor Mr. Evarts adverted to that point—but Mr. Sanderson sustained the judgment of the Court below in favor of the defendant, on the ground that the whole assessment was void on account of having included in the valuation of the roadbed these fences.

MR. CROSS: Without segregating them? A. Without segregating them? Not without segregating them; on the ground that they were not subject to assessment, and should not enter into the value of the roadbed. Of course, it became the duty of Judge Rhodes, the Attorney-General, and myself, to defend this finding to the best of our ability, which I think we did do. This argument, which you speak of, related to that point. I contended then, as I have always contended, and as I contend now, with all due respect to the Supreme Court of the United States, that the fences are a part of the roadway, just as much as—and I used the illustration, I believe—that if the railroad company had sold its road—its railroad from San Francisco to San José—it would have been a strange proceeding to have seen it taking its fences away. If it had sold its mole at Oakland, the piles and planks on top of them, it would have been a strange proceeding to have seen it taking away the railing on the sides.

MR. LEZINSKY: I should like to explain a matter to you, and then you may explain just exactly what you mean. Mr. Haymond, in his statement, took this argument which is reported in this report, and said that it was a statement made by you, that not only for the years 1881-82, but for every year subsequent to that time up to the time that decision was rendered, or rather that that argument was made in the Supreme Court, that the State Board of Equalization had included fences, or the value of fences, in making up the assessment for the railroad corporations. A. You say that he so stated?

Q. Yes, sir; he so stated. A. Well, what of it?

Q. Now, I ask you whether or not you had any knowledge whether they had included the value of fences in assessments subsequent to 1882? A. What had I to do in arguing a case that was tried in 1883, and the record was made up, with what may have been subsequently done by the Board. It could not possibly have affected that case.

MR. DUNN: They tried to convey the impression to this committee that you were the attorney in those matters, and that undoubtedly you had advised the Controller of the State and Board of Equalization to assess fences.

MR. CROSS: Nothing of that kind appears in the letter.

THE WITNESS: I have a very distinct recollection of having a conversation with you, and I think it took place in the presence of all, or of the principal attorneys that figured in the trial of the Santa Clara case—the Attorney-General, Mr. Marshall, Mr. Terry, Judge Rhodes, Mr. Lesser, Judge Waymire, Mr. Baggett, and possibly some others, in which we were informed that the State Board of Equalization requested us to state our views as to the proper manner of assessing these railroads. The principal point of information sought being whether they should assess the franchise separate, the roadway separate, or whether the whole thing should be assessed as a unit. My recollection is that we gave the Board a written opinion signed by all of us, in which we stated to them that it was our opinion that the road should be assessed as a unit. And in that connection the question came up as to these fences, and my recollection is that it was stated at that time that since the railroad company had made a point of that, it was better not to include them in the roll.

MR. DUNN: I know you stated that to me, not once, but half a dozen times. A. Not because I didn't consider that they were not a part of the road: I did think so, and shall so long as I live. But as a matter of precaution, to avoid that little insignificant point mingling itself with these great constitutional questions, we advised that the fences be not included. That is, I advised that; I am speaking for myself.

MR. JOHNSON: Instead, therefore, of making a stipulation in the Santa Clara case, you introduced your witnesses and made the best showing you could, and then due precaution was taken in respect to the settlement of the findings, by proposing findings or objecting to the findings proposed by the railroad people, and in this way the findings were settled after careful consideration? A. Most careful and deliberate consideration. I remember that Judge Field came repeatedly into Judge Sawyer's chambers which adjoined his own, and was impatient that the findings had not yet been settled. Because there was a great deal of discussion; every finding underwent a minute and careful consideration, and was settled after the most careful consideration.

MR. CROSS: Mr. Delmas, do you know of any finding in that case which we are talking about which was not supported by evidence? A. I do not, sir; that is, if the evidence—if it was competent to admit the evidence of an officer of the action of the Board in making an assessment by parol—which we denied.

Q. The Court ruled on that matter? A. Yes, sir; adversely to us.

Q. The Court ruled it was admissible? A. Yes, sir; the Court ruled it was admissible, and that evidence being in, the finding was supported by evidence.

Q. The evidence was all one way on that point? A. Yes, sir.

Q. Can a finding upon evidence, which is all one way, and supported

by the evidence introduced in the case upon that matter, be properly characterized as a false and fraudulent finding? A. No, sir.

MR. LEZINSKY: This has reference only to the case of 1882? A. Certainly.

Q. Now, as to the findings of the cases of 1883, 1884, and 1885. You are not making any statement concerning whether the findings in those cases are false or fraudulent or not? A. I have no knowledge of any findings, except those in the Santa Clara case and the cases we tried at that time. The other findings I had nothing to do with whatever.

Q. And you know nothing concerning the evidence? A. No, sir.

MR. DIBBLE: Mr. Delmas did not participate in the preparation of these judgments? A. In none of them except what was called the Santa Clara case.

MR. DIBBLE: Hence, he is not bound or does not intend to give any opinion as to whether they were correct or not? A. No, sir.

MR. DUNN: Did you ever receive any notice that at any time any action was being taken in these matters; that action was to be taken by the Attorney-General on certain dates; what he proposed to do; that he proposed to settle the findings? A. No, sir; not as to the settlement of the findings. I did receive notice from the Attorney-General on one or more occasions to be present in Court on such a day, that such a thing would be done, and I remember the first one of those notices was when the proposition of the railroad attorneys to pay 50 or 60 per cent—60 per cent, if I recollect right—of the taxes was accepted by the Attorney-General. I was notified as your attorney to be present in Court on that day. I went into Court and protested, as far as I could, and perhaps beyond the strict bounds of prudence, against the proceeding; but, of course, I had no power to control the case. The Attorney-General had made up his mind to accept that amount.

Q. You never had an opportunity to look at this stipulation? A. I never concurred in any stipulation, and never concurred in any of these proceedings, or in any of these judgments.

Q. You had no knowledge of them at all? A. No, sir; no knowledge of them at all.

MR. HYDE: Does it appear of record for whom Mr. Delmas appeared?

MR. DIBBLE: You brought the suits for the Controller.

MR. JOHNSON: In 1885, for the tax of 1884? A. I appeared in obedience to a request of Mr. Dunn.

Q. In what manner did you appear in these cases?

MR. HYDE: I mean here to-night. Let it appear to-night for whom he appears as a witness. It makes a great deal of difference. An admission by the defendant's witness is an admission by the defendant.

MR. DIBBLE: Mr. Delmas was subpoenaed by the Chairman of this committee, Mr. Seawell.

MR. HYDE: As a witness for the Controller?

MR. CROSS: As a witness in the case.

Q. The Circuit Court having determined that the Attorney-General had control of these cases, if you had signed a stipulation to do or not to do certain things, it would have had no force? A. No, sir; not the slightest.

Q. And therefore the attorneys of the Central Pacific Railroad could have accomplished nothing by having you sign or refuse to sign a stipulation under that ruling, and were obliged to go to Mr. Marshall to execute all stipulations? A. Yes, sir. I desire to read to your committee the order that was entered in the case, in which the Court did correct its record, and it read in these words: "This case, heretofore argued and submitted to the Court for consideration, a decision upon the motion to amend

the record herein having been duly considered, it is ordered that said motion be and the same is hereby granted; and it is further ordered that the order made and entered herein on the seventeenth day of September, A. D. 1885, be amended by striking out the words 'on motion of attorneys for plaintiff' and inserting therefor 'on motion of Hon. E. C. Marshall, Attorney-General,' recognized by the Court as controlling the case on behalf of the plaintiff."

MR. DIBBLE: That distinctly shows that the whole case, the whole proceedings, were taken without the knowledge or consent of Mr. Delmas? A. The date of that order is the eleventh of January, 1886, correcting the record of the seventeenth day of December, 1885.

Q. That was upon the taxes of 1884? A. Yes, sir.

Q. Was there any other motion to correct the record? A. No, sir.

Q. The Attorney-General made no effort to correct it? A. No, sir; it was not likely that he would attempt to correct it.

Q. The Legislature passed an Act to authorize the Attorney-General to employ counsel, and the question was whether the Court would recognize the Attorney-General. The United States Circuit Court held that it would recognize the Attorney-General, as against the provisions of the State statute authorizing the Controller to employ counsel? A. Yes, sir.

E. W. MASLIN.

Recalled.

THE WITNESS: I testified that in 1883 I listened to the testimony in the case, before the Circuit Court, wherein the question of fences was involved. Mr. Cross, interrupting me, I believe said that this decision was rendered in 1882, and had no reference to fences. The case I testified to was the case of Santa Clara County against the railroad company, which was rendered in 1883. The case Mr. Cross referred to was the San Mateo case, decided in 1882.

MR. CROSS: The case in which you testified is the case which Mr. Delmas argued in the Supreme Court? A. Yes, sir.

P. P. CHAMBERLAIN.

Called and sworn.

MR. LEZINSKY: I want to prove by this witness that a statement is not, and let him explain what was done in the matter.

MR. CROSS: What is it; something that appears in the transcript?

MR. LEZINSKY: No, sir. Now, a statement is made here that the taxes which were due to the County of San Mateo for the year 1882, by the Central Pacific Railroad Company—1881-2—had been paid to the County of San Mateo twice. That is, that the sum of fourteen thousand and odd dollars had been paid by the Central Pacific Railroad Company into the Treasury of that county.

MR. CROSS: No; that is not the statement.

MR. LEZINSKY: That is the statement made by Mr. Ryan, that those taxes had been paid twice.

MR. CROSS: Not that they were paid into the Treasury twice; one payment was made to the attorneys of the county, Rhodes & Barstow.

MR. LEZINSKY: Did that go into the Treasury?

MR. CROSS: It was paid to the attorneys.

MR. LEZINSKY: And then the railroad company again paid it into the Treasury?

MR. CROSS: I don't know about that. We claim a payment to the attorneys of the plaintiff is a payment.

MR. RYAN: The second time it was paid to the Board of Supervisors.

MR. DIBBLE: First to the attorneys in the case, and afterwards to the Supervisors?

MR. CROSS: Two distinct payments.

MR. LEZINSKY: There were two checks drawn for it?

MR. RYAN: I have the vouchers there.

MR. LEZINSKY: One is a voucher from the attorneys and one from the Treasurer.

MR. DIBBLE: What do you know about the payment of these checks to San Mateo County?

THE WITNESS: All I know is of the last payment, I think it was in December, 1885. They paid in the sum of seven thousand and odd dollars.

Q. Paid to you? A. Paid to the County Auditor, as Tax Collector.

Q. Received by you as County Treasurer? A. Yes sir; from the Auditor.

MR. DUNN: You received the coin? A. Yes, sir.

MR. LEZINSKY: When did you receive the coin? A. I think it was in December, 1885.

Q. Was there any money at that time on deposit in the Treasury to the credit of these corporations, or this corporation? A. No, sir; not any record of it.

MR. DIBBLE: Was there, as a fact? A. Yes, sir; as a fact there was.

MR. LEZINSKY: Was that money withdrawn? A. It never was withdrawn; it was paid in to the county as a loan. That is the way it appears on the Treasurer's books. I was not Treasurer at that time. That was paid in 1882.

Q. In 1882 there was paid into the Treasury the amount of \$7,247 62, as a loan? A. Yes, sir; I think that is the amount.

Q. Now, then, when do you claim that \$7,613 30 was paid in? In 1885? A. I think so; yes, sir.

Q. Was this money that was then on deposit as a loan, or this money that was loaned, used towards making this payment? A. No, sir.

Q. Who received this amount of \$7,613 30; who received this amount? A. I received it.

Q. Who was the person who received it as a county officer? A. The Treasurer had it the last time; it was first paid in to the Auditor, as he was the Tax Collector.

Q. Did you get the coin into your hands? A. Yes, sir; I got the coin into my hands.

Q. Who gave you the coin? A. It came from the Auditor.

MR. HALL: I don't see the particular materiality of this.

MR. DUNN: Mr. Chairman, pardon me. Mr. Chamberlain made an affidavit in 1885, and upon that affidavit I made a statement that nothing but the face of the tax was paid to San Mateo County in the case of 1881-82.

THE WITNESS: Have you got that affidavit?

MR. DUNN: Yes, sir.

A. Don't that say my books show that?

MR. DUNN: We propose to show that that case was dismissed from the United States Supreme Court at the telegraphic request of these gentlemen, and that was requested by Mr. Creed Haymond, of San Francisco, by telegraph. Now, Mr. Haymond says that the tax, penalty, interest, costs, and attorneys' fees were paid. We propose to show that that statement is not

correct, and that it was a trick played upon the United States Supreme Court. Whether we can show that or not, will be determined by this witness.

MR. DIBBLE: Let me see if I understand Mr. Chamberlain's statement. When did you go into the office of Treasurer? A. January 1, 1883.

Q. You found on deposit there, as a loan, a certain sum of money? A. No, sir; I did not. I found that record on my books, but it was put into the fund and used by the county.

Q. Your books show that a certain amount of money had been received as a loan from the railroad? A. No; not from the railroad. It shows that it was received from A. Green, who was one of the Board of Supervisors.

Q. Does it show whom he received it from? A. Yes, sir; he got it from Rhodes & Barstow.

Q. They were the attorneys for the county? A. Yes, sir.

Q. Do you know where they got it? A. They got it from the railroad company.

Q. Then, as a fact, the railroad company had paid to the attorneys for the county this sum of money? A. \$7,613 30.

Q. What further amount of money was paid to you after you became Treasurer? A. That was supposed to be the balance due of interest at five per cent, and for all costs, and so forth.

MR. HYDE: For taxes up to what time? A. Taxes of 1880-81.

MR. DIBBLE: When did you receive this balance of the payment? A. In December.

Q. What time in December? A. I think it was the sixteenth.

Q. What was the balance paid to you? A. Something over \$7,000.

Q. Was that the complete amount of taxes due for 1880-81? A. I don't know about that, because I am not the Tax Collector.

Q. Did you so understand it? A. Yes, sir; that is what I understood, and that is what the Auditor, who received the books as they came from the Tax Collector—that is the amount he said was due.

MR. HYDE: When was that money paid in by Mr. Green, as a loan to the county? A. In 1882.

MR. DIBBLE: When do your books show it was received from Mr. Green, the Supervisor? A. In 1882.

Q. What time in 1882? A. December third, I think.

Q. That was about a month before you went into office? A. Yes, sir; more than that.

Q. Well, you went into office in January—

MR. CROSS: In 1880 the officers went in, in March.

MR. DIBBLE: This was in 1882.

THE WITNESS: It was about a month before I went in.

Q. When was this case dismissed in San Mateo County?

MR. DUNN: About January, 1886.

MR. STORKE: Does that money still stand as a loan—that first payment—on your books? A. There has never been any change made.

MR. DUNN: Here is the certificate of the Auditor: "I, George Barker, County Auditor, do hereby certify that the Central Pacific Railroad, for taxes, has this day made a settlement with me for State and county taxes." Mark the distinction between State and county taxes, \$7,642 62, the exact sum which was purported to have been paid to Mr. Green in 1882. It could not have been the face of the tax for 1881-82, for that was not the sum. The railroad people paid too much if they paid that. This is dated the eleventh of December, 1885. It was upon that date that I understand the telegram was sent by you yourself and Mr. Barker to the Clerk of the

Supreme Court at Washington, that the tax, penalty, interest, costs, and attorneys' fees were all paid? A. Yes, sir.

MR. DUNN: Two days following this date I went down to Redwood City to make an investigation in the matter. I called upon the Auditor, and I said: "Mr. Barker, I would like to see your books; I want to see if the railroad people have paid any taxes here recently." He said: "I have no such record on my books." I said: "Is that possible?" And I said: "Won't you come down to the Treasurer's office with me?" We went in, and he introduced me to you, and I said to you: "Mr. Chamberlain, I would like to see your books." You said: "What do you want to see?" I said: "I want to see a payment of taxes made recently by the railroad company to this county." You said: "That tax has not been paid officially, but I have it in my safe." I said: "Do you receive money into the County Treasury unofficially? Do you not require a certificate from the Auditor of the county before you receive any money?" I think your answer was that that, of course, was the rule, but this money was paid in and you found it in your safe. Two days afterwards, or on the sixteenth of the same month, I went down again to San Mateo County, to Redwood City, and there was a gentleman, a lawyer from Judge Rhodes' office, with me.

MR. CROSS: Who was that?

MR. DUNN: That was Mr. Lawler. And I then again asked to see your books, and as I recall it, the only thing that your books showed at that time was this purported loan to Mr. Green—money paid by Rhodes & Barstow. Now, I ask you, how was it that Mr. Barker could date a certificate on the eleventh day of December, as having received money, when his books have no record of it, and your books have no record of it?

MR. DIBBLE: What year was that?

MR. DUNN: 1885. The date I now speak about was the eleventh of December.

THE WITNESS: He had received the money, and I suppose he could have telegraphed that he had received it.

Q. If the railroad company had paid the tax, penalty, interest, costs, and attorneys' fees, how is it that yourself and Mr. Barker have made a sworn statement to our office time and again since then, and you have never included any of that additional money in your report? A. Anything that has been paid to me since I have been Treasurer has been reported to you; the others I don't know anything about.

Q. I ask you if you have ever reported since your own term of office—since this money was in controversy—if you have ever reported to our office any money relative to this matter except this \$7,247 62? A. I think not, sir. That was the only money I ever received.

Q. That was the only money you ever received? A. Yes, sir; that was the only money I ever received since I was Treasurer. I was not Treasurer when this money that you speak of was paid.

Q. You say that was a loan? A. That is what the books show.

Q. And your books still show it is a loan? A. Yes, sir.

Q. Now, you come here and make a statement that that was a payment of this tax. If it was a payment of this tax, why has not the State of California received its share of it? A. I can't tell you.

Q. Why have you and the Auditor of the county made sworn statements to us every three months of the amount of money you have received and this sum has never been paid into the Treasury? A. I can't say. If I have received it—everything I have received I have accounted for.

MR. STORKE: It evidently shows that there is money in San Mateo County that belongs to the State.

MR. DIBBLE: This seems to be the statement of this witness, that at the time he took his office in January, 1883, he found upon the record in the books of that office the statement showing that a certain amount of money—\$7,900—had been received from a Mr. Green, who was one of the Board of Supervisors. This money appears to have been paid by Rhodes & Barstow, who were the attorneys of the county in collecting these taxes. Here appears to be the receipt of Rhodes & Barstow for that money, they having received it from the railroad company. This witness stated that after he became Treasurer he received \$7,600, and that amount he has accounted for.

MR. STORKE: He has not accounted to the State for its share.

MR. DIBBLE: This is a year afterwards.

MR. HALL: I would like to ask if this money is still in the safe, or if it has been used?

THE WITNESS: It has been used; it was turned into the general fund.

Q. When? A. When it was received.

Q. Before you went into office? A. Yes, sir.

Q. It took the same course as any other moneys turned in? A. No; not the same course as any other moneys turned in. Money that comes in from taxes is put in and goes to its proper place in the different funds. This money came in and was all put in the general fund.

MR. DUNN: Did you ever see the agreement that was made between Rhodes & Barstow and the railroad attorneys in this matter? A. No, sir.

MR. CROSS: It is not an agreement, it is a receipt.

MR. DUNN: The agreement was to this effect: That this sum of money given to Rhodes & Barstow was for the face of the tax, not alone for this year, but for the years 1881-82; and that agreement was to this effect: That this money was to be loaned to San Mateo County until the final determination by the Supreme Court of the United States of this railroad tax case. When that matter was to be determined, the money was to be a gift to San Mateo County. If it was against the railroad company, that money was to be considered a payment on account. Now, you say this money was received in December, 1882? A. December, 1882.

Q. December, 1882. Now, when the next settlement was made by the County Treasurer of San Mateo County, who settled up the taxes in that quarter, January, 1883; did you not? A. Yes, sir.

Q. Then why wasn't this money reported then? A. I don't know why.

MR. DUNN: Well, I say to the committee here, that I propose to go down to San Mateo County, and make an investigation of this matter.

Q. I understand this money was deposited there as a loan? A. It was paid in as a loan, into the county fund as a loan, to be used by the county the same as they would use any other money.

MR. LEZINSKY: It was never paid in then as a payment of taxes? A. No, sir; the records do not so show.

MR. DIBBLE: Was all the money that was received by you accounted for? A. Yes, sir.

Q. Is there any question about the money received by Mr. Chamberlain being accounted for?

MR. DUNN: I think that this payment made by Messrs. Rhodes & Barstow to Mr. Green is not properly accounted for. A receipt in the first place was given by Rhodes & Barstow to the railroad company; then this money was afterwards turned over to a member of the Board of Supervisors. After I went down to San Mateo County I sent a telegram to Judge Rhodes

that there was not anything on the record of the books of the Auditor or Treasurer that I could find that showed the payment of a single dollar of taxes. Now I think that a day or two after I was down there—

THE WITNESS [Interrupting]: I showed you this loan.

MR. DUNN: Certainly; but there was no payment—nothing on your books to show that there was the payment of a single cent of taxes. My impression is, that after I went down there, and this matter was discussed in the newspapers, that action was taken by the Board, and that this money was transferred from that loan to the credit of this tax, because the face of the tax is in both cases identical.

THE WITNESS: The whole amount of the two payments amounted to \$15,585. That will be accounted for, and you can put my experts on the books; you will find that amount in the Treasury.

MR. DUNN: Let me ask you, wasn't that \$15,000 to cover the taxes of 1880-81 and 1881-82? A. Yes, sir; and the interest and costs.

Q. They are for both years? A. Yes, sir.

Q. Then the total amount of money you have received in the County Treasury in connection with the railroad taxes has been \$15,000? A. Yes, sir.

Q. The total amount you have received in that connection has been \$15,000? A. Yes, sir.

Q. Then you ought to have received \$21,000 to make your statement good, because the face of the tax for both years amounts to the amount you now state? A. I think that Rhodes & Barstow retained in their hands, when they paid over this money to Green, some \$4,000. That would amount to over \$20,000. After it was settled the Board of Supervisors sued the attorneys, and I think they got \$600.

MR. HYDE: You knew, Mr. Dunn, that he had this loan of \$7,000?

THE WITNESS: I told him that the other money was there. I think the money was paid in on a Saturday and you were down there on a Monday.

MR. HYDE: Mr. Dunn, when you knew that he had this loan of \$7,000 there, what notice did you take of that yourself as Controller of the State?

MR. DUNN: I took no notice except this, that when I went back to San Francisco I made that statement to Mr. Barstow, and my recollection is that that was the first time that any money had been paid to Rhodes & Barstow in connection with this case.

Q. You knew that that was a payment by the railroad company indirectly?

MR. DUNN: I saw the written agreement to that effect, that when the suit was decided the money was to be a gift to the county, if the suit was in favor of the railroad; if it was decided against the railroad it would be a payment on account. Here is the receipt: "Received, San Francisco, September 6, 1882, of the Southern Pacific Railroad Company, the sum of \$4,752 37, and the sum of \$475, attorneys' fees, all to be credited upon any judgment that may be obtained by the plaintiff in the above entitled action, in case judgment shall be rendered in said action in favor of said defendant"—it was a judgment to be rendered—"in favor of said defendant, then said sum of money, less our fees agreed to be paid by said county, shall be paid into the Treasury of said County of San Mateo, as a donation by said defendant in lieu of taxes for the fiscal year 1880-81, declared invalid; but in the event that a law shall hereafter pass providing for a reassessment of property in the complaint in the said action in the said county for said fiscal year, then said sum of money is to be treated as a payment on account of taxes for said fiscal year. Rhodes & Barstow, attorneys for said County of San Mateo for said year."

MR. STORKE: That is a receipt for the first money paid?

MR. DUNN: Yes, sir; this is for the taxes of 1880-81. This tax is a tax matter of 1881-82.

MR. CROSS: Mr. Chamberlain, do you know that the tax for 1881-82 was paid?

MR. RYAN: This is for two years; a part of that belongs in here.

MR. DUNN: "Received, San Francisco, September 6, 1882, of the Southern Pacific Railroad, the sum of \$7,247 63, and the sum of \$724 76, attorneys' fees, all to be credited upon any judgment that may be obtained by the plaintiff in the above entitled action; in case judgment shall be rendered in said action in favor of said defendant then said sum of money, less our fees agreed to be paid by said county, shall be paid into the Treasury of said County of San Mateo as a donation by said defendant, in lieu of taxes for the fiscal year of 1881-82 declared invalid; but in the event that a law shall be hereafter passed," etc. Now just add these two amounts: \$7,247 63 and \$4,752 37. Now then add to it again \$7,613 30. That makes a total of \$19,613 10.

MR. CROSS: Here is the receipt which makes the total amount we claim. You will find another receipt here.

MR. LEZINSKY: That is not a receipt; that is the telegram from the clerk.

MR. CROSS: The amount is seven thousand nine hundred and odd dollars.

MR. DIBBLE: \$4,752 37 and \$475 24; \$7,247 63 and \$724 76.

MR. CROSS: How much does that add up?

MR. DIBBLE: \$13,200.

MR. DUNN: I understand Senator Cross to say that \$13,200 is the total amount that has been paid in donations.

MR. CROSS: It is not donation; the receipt shows what it was. The receipts show there is this much money paid. If judgment is rendered against the railroad company, this is a payment on account; if judgment is rendered in favor of the railroad company, this is donated to San Mateo County, unless the taxes shall be reassessed, and if it is then it shall be a credit on such reassessment. Mr. Dunn claimed that you could not receive that money; that the money had to come through him on account of this law, and that Rhodes & Barstow, having received the money, delivered it to the Board of Supervisors to be turned into the county; that the Auditor refused to receive it, under the instructions of Mr. Dunn; but that it was taken and put into the safe, and because of the order that he could not receive it, it was entered on the books in that form.

THE WITNESS: The fact is that the railroad company would not pay taxes, and, having commenced the suit against them, the railroad company paid in some \$13,000 to Rhodes and Barstow. So that the county could have the use of it, and that it should not lay in the hands of the attorneys, Rhodes & Barstow loaned to Green this \$7,900, and Green turned it into the Treasury through the Auditor. It was turned into the general fund and used as other moneys. Then this other payment was made, in 1885, of \$7,600.

MR. CROSS: Whatever your irregularities were, if they were irregularities, were irregularities between the attorneys and the officers of the county, were they? A. I think so.

Q. The amount of the original tax was something like \$12,000, and they paid attorneys' fees, penalties, interest, and cost up to \$21,000? A. Yes, sir.

MR. DUNN: Here is the record showing this payment: December fourth, A. F. Green loaned by Board of Supervisors, \$8,971 47; now, in addition to that, you claim to have received \$7,613 30. Out of this \$8,971 47 you

said there was a payment of attorneys' fees. Now, this certificate, which was dated December 11, 1885, shows the payment of the first tax of \$7,-247 62: where is the \$21,000?

MR. CROSS: The balance is charged to Rhodes & Barstow.

THE WITNESS: \$4,000 on the receipt there.

MR. STORKE: They withheld it? A. Yes, sir.

MR. DUNN: Where is any record showing any payment of taxes beyond this sum of money here?

THE WITNESS: There is no record.

MR. DUNN: Where is the record to show a single dollar of interest?

MR. CROSS: The trouble is between the county and its attorneys and its bookkeeper. Under the law at that time you received money from the county; you didn't receive it from the railroad company, as the law was at that time.

MR. LEZINSKY: This man says that this \$7,947 41 went into the general fund, and was used in the county. Now, if they paid up that entire tax, principal, interest, penalty, and costs, they should have paid in some \$13,-000. It does not show that they have paid it; because the State would have been entitled to its proportion of its entire amount. I say that the railroad company never paid it, because the railroad company made a donation to the County of San Mateo, and the State cannot come against the County of San Mateo for moneys paid to the County of San Mateo as a donation. It was not paid as a tax; it was paid as a donation to the county.

MR. DUNN: I want to see the record of the payment of this \$7,613 in addition to this.

MR. CROSS: Those are matters entirely between the county and the State.

MR. DUNN: I beg your pardon. I want to see the record on his books showing the payment of that amount.

MR. DIBBLE: I think we had better bring this matter to a close. It seems to have resolved itself into a dispute between county officers.

[Further hearing continued until Monday evening, February 25, 1889.]

WHEREAS, There is now pending in the Supreme Court of the United States an action in which the County of San Mateo is plaintiff in error, and the Southern Pacific Railroad is defendant in error; and, whereas, the defendant in error, on the sixth day of September, 1882, paid to Rhodes & Barstow, attorneys for plaintiff in error, on account of the cause of action stated in the complaint, the sum of \$7,247 63, and the further sum of \$724 76, attorneys' fees: and, whereas, the said action and the proceedings therein were of a friendly nature, entered into in good faith, to determine the validity of the constitutional provisions of the State of California, relating to the taxation of railroad property, and, whereas, when said case was argued and submitted to the Supreme Court of the United States, various parties, for reasons of their own, misrepresented the said action and the relation of the parties thereto: and, whereas, it is believed by the parties that the purposes for which said action was instituted have, by such misrepresentations, been defeated: and, whereas, it was always understood that, whatever might be the result of said action, the said Southern Pacific Railroad Company should pay the amount claimed, and thus show its good faith therein: and, whereas, the Supervisors of said county have determined that it is impolitic to make any further expenditures in said actions,

and have authorized a committee of their Board to settle and finally adjust the same;

It is hereby agreed between the Southern Pacific Railroad Company, defendant in error in said action, and the said committee of the Board of Supervisors, acting for the County of San Mateo, that the said Southern Pacific Railroad Company shall pay into the Treasury of said county, on account of the cause of action stated in the complaint, the sum of \$7,613 30 in addition to the sum paid to said Rhodes & Barstow; the same being sufficient to more than pay the full amount claimed for tax penalties, attorneys' fees and interest, as shown by the complaint in said action, and by the assessment roll on file in said county.

It is further understood and agreed that when the amount is finally settled between the county and Rhodes & Barstow, an account shall be stated, based upon said complaint and on the assessment roll, of the principal, interest, delinquency, and attorneys' fees, and also of the payment made to Rhodes & Barstow; and that the payment in excess of the true amount due shall be returned to the said Southern Pacific Railroad Company, it being the intention of the parties that the whole tax, interest, and attorneys' fees shall be paid, and then the remainder of the payment be returned to the said Southern Pacific Railroad Company.

In testimony whereof the parties hereunto have signed this agreement in duplicate, this eleventh day of December, 1885.

SOUTHERN PACIFIC RAILROAD COMPANY.

By CREED HAYMOND, General Counsel.

W. H. LAWRENCE,

A. F. GREEN.

JOHN MULLEN,

Committee of Board of Supervisors of San Mateo County.

I hereby certify that in pursuance of the foregoing agreement the said Southern Pacific Railroad Company, on the eleventh day of December, 1885, paid into the Treasury of the County of San Mateo, for the uses and purposes mentioned in said agreement, the sum of \$7,613 30, in United States gold coin. I further certify that the County of San Mateo has had the use of the money in said agreement referred to as having been paid to Rhodes & Barstow since the sixth day of September, 1882; and that the said sums more than pay off and discharge the principal, penalties, attorneys' fees, costs, interest, and all other things claimed in the complaint referred to in the foregoing agreement.

Witness my hand and the seal of the County of San Mateo, this eleventh day of December, 1885.

GEORGE BARKER,

County Auditor.

[SEAL.]

REDWOOD CITY, California, December 14, 1885.

To the Clerk of the Supreme Court of the United States, Washington, D. C.:

The full amount of the taxes, including attorneys' fees, delinquencies, all interests and costs involved in the case of San Mateo County against the Southern Pacific Railroad Company has been paid by the Southern

Pacific Railroad Company, and the whole cause of action, as stated in the complaint, has been fully satisfied and discharged.

[SEAL.]

GEO. BARKER,
Auditor of San Mateo County.
P. P. CHAMBERLAIN,
Treasurer of San Mateo County.

In the Superior Court of the State of California, in and for the County of San Mateo.

COUNTY OF SAN MATEO, Plaintiff,)	In the U. S. Circuit Court,
vs.		Ninth Circuit.
SOUTHERN PACIFIC R. R. Co., Defendant.))	No. 2805.

Received, San Francisco, September 6, 1882, of the Southern Pacific Railroad Company, the sum of four thousand seven hundred and fifty-two thirty-seven one hundredths (\$4,752 37) dollars and the sum of four hundred and seventy-five twenty-four one hundredths (\$475 24) dollars, attorneys' fees, all to be accredited upon any judgment that may be obtained by the plaintiff in the above entitled action.

In case judgment shall be rendered in said action in favor of said defendant, then said sum of money, less our fees agreed to be paid by said county, shall be paid into the said Treasury of the said County of San Mateo as a donation by said defendant in lieu of taxes for the fiscal year 1880-81 declared invalid. But in the event that a law shall be hereafter passed providing for a reassessment of property in the complaint in said action in said county for said fiscal year, then said sum of money is to be treated as a payment on account of taxes for said fiscal year.

RHODES & BARSTOW,
Attorneys for San Mateo County in said action.

In the Superior Court of the State of California, in and for the County of San Mateo.

COUNTY OF SAN MATEO, Plaintiff,)	In the U. S. Circuit Court,
vs.		Ninth Circuit.
SOUTHERN PACIFIC R. R. Co., Defendant.))	No. 2807.

Received, San Francisco, September 6, 1882, of the Southern Pacific Railroad Company, the sum of seven thousand two hundred and forty-seven sixty-three one hundredths (\$7,247 63) dollars, and the sum of seven hundred and twenty-four seventy-six one hundredths (\$724 76) dollars, attorneys' fees. All to be credited upon any judgment that may be obtained by the plaintiff in the above entitled action.

In case judgment shall be rendered in said action in favor of said defendant, then said sum of money, less our fees agreed to be paid by said county, shall be paid into the Treasury of said County of San Mateo as a donation by said defendant in lieu of taxes for the fiscal year 1881-82, declared invalid. But in the event that a law shall be hereafter passed providing for a reassessment of property referred to in said complaint in said county for said fiscal year, then said sum of money is to be credited as a payment by defendant on account of taxes for said fiscal year.

RHODES & BARSTOW,
Attorneys for San Mateo County in said action.

SAN FRANCISCO, September 6, 1882.

Southern Pacific Railroad Company to County of San Mateo, Dr.

To amounts specified in the annexed receipts, and for the uses and purposes therein mentioned, \$13,200.

No. 2806, taxes 1880-1, \$4,752 37, and attorneys' fees, \$475 24__	\$5,227 61
No. 2807, taxes 1881-2, \$7,247 63, and attorneys' fees, \$724 76__	7,972 39
Total	\$13,200 00

SAN FRANCISCO, September 6, 1882.

Received from Southern Pacific Railroad Company \$13,200, in full for above account.

RHODES & BARSTOW.

[Indorsed]: S. P. R. R. No. 593. \$13,200. Name, San Mateo County. Place, San Mateo. For taxes 1880-1 and 1881-2. Month of September. When paid, September 6, 1882. Chargeable to suspense, \$12,000; legal expense, \$1,200; total, \$13,200.

I certify that the within account, amounting to \$13,200, is correct.

SANDERSON,
By HAYMOND.

Receipt for State and County Taxes. No. 3204.

Caution. Examine the following, and have errors (if any) corrected before leaving the office.

Apportionment.—State Tax; \$0.596; County General Fund, \$0.25; School Fund, \$0.16; Indigent Fund, \$0.09; Road Fund, \$0.34; Interest Fund, \$0.084; Bridge Fund, \$0.08.

STATE OF CALIFORNIA, COUNTY OF SAN MATEO,)
TAX COLLECTOR'S OFFICE, REDWOOD CITY, December 11.)

Received of Southern Pacific Railroad Company, twenty-four hundred and twenty-six fifty one hundredths dollars in full, for State and county taxes for the fiscal year 1881-82, as per assessment roll on the following property, to wit:

Real estate as follows: In Second Township, roadway, etc., amount of assessment, \$132,000.

Total tax	\$2,310 00
Five per cent delinquency	115 50
Costs	1 00
Total	\$2,426 50

GEORGE BARKER,
County Auditor.
P. P. CHAMBERLAIN,
County Treasurer.

Receipt for State and County Taxes. No. 2203.

STATE OF CALIFORNIA, COUNTY OF SAN MATEO,)
 TAX COLLECTOR'S OFFICE, REDWOOD CITY, December 11.)

Received of Southern Pacific Railroad Company, three thousand four hundred and eighty-seven ninety-five one hundredths dollars in full for State and county taxes for the fiscal year 1881, as per assessment roll, the following property, to wit:

Real estate as follows: In First Township, roadway, etc., amount assessment, \$189,750.

Total tax -----	\$3,320 62
Five per cent delinquency -----	166 33
Costs -----	1 00
Total -----	<u>\$3,487 95</u>

GEORGE BARKER,
 County Auditor.
 P. P. CHAMBERLAIN,
 County Treasurer.

Receipt for State and County Taxes. No. 2096.

STATE OF CALIFORNIA, COUNTY OF SAN MATEO,)
 TAX COLLECTOR'S OFFICE, REDWOOD CITY, December 11.)

Received of Southern Pacific Railroad Company sixteen hundred and ninety-eight eighty-five one hundredths dollars in full for State and county taxes for the fiscal year 1881, as per assessment roll, on the following property, to wit:

Real estate as follows: In Third Township, roadway, etc., amount assessment, \$92,400.

Total tax -----	\$1,617 00
Five per cent delinquency -----	80 85
Costs -----	1 00
Total -----	<u>\$1,698 85</u>

GEORGE BARKER,
 County Auditor.
 P. P. CHAMBERLAIN,
 County Treasurer.

Whereas, there is now pending in the Supreme Court of the United States an action in which the County of San Mateo is plaintiff in error, and the Southern Pacific Railroad Company is defendant in error; and whereas, the defendant in error, on the sixth day of September, 1882, paid to Rhodes & Barstow, attorneys for plaintiff in error, on account of the cause of action stated in the complaint, the sum of \$7,247 63, and the further sum of \$724 76 attorneys' fees; and, whereas, the said action and the proceedings therein were of a friendly nature, entered into in good faith, to determine the validity of the constitutional provisions of the State of California, relating to the taxation of railroad property; and, whereas, when said case was argued and submitted to the Supreme Court of the United States, various parties, for reasons of their own, misrepresented

the said action and the relation of the parties thereto: and, whereas, it is believed by the parties that the purposes for which said action was instituted and by such misrepresentations been defeated; whereas, it was always understood that whatever might be the result of said action, the said Southern Pacific Railroad Company would pay the amount claimed, and thus show its good faith therein; and, whereas, the Supervisors of said county have determined that it is impolitic to make any further expenditures in said actions, and have authorized a committee of their Board to settle and finally adjust the same.

It is hereby agreed between the Southern Pacific Railroad Company, defendant in error in said action, and the said committee of the Board of Supervisors acting for the County of San Mateo, that the said Southern Pacific Railroad Company shall pay into the Treasury of said county on account of the cause of action stated in the complaint the sum of \$7,613 30 in addition to the sum paid to said Rhodes & Barstow, the same being sufficient to more than pay the full amount claimed for taxes, penalties, attorneys' fees, and interest, as shown by the complaint in said action and by the assessment roll on file in said county.

It is further understood and agreed that when the account is finally settled between the county and Rhodes & Barstow, an account shall be stated, based upon said complaint and on the assessment roll, of the principal, interest, delinquency, and attorneys' fees, and also of the payment made by Rhodes & Barstow, and the payment in excess of the true amount due shall be returned to the said Southern Pacific Railroad Company, it being the intention of the parties that the whole tax, interest, and attorneys' fees shall be paid, and the remainder of the payment be returned to the said Southern Pacific Railroad Company.

In testimony whereof the parties hereunto signed this agreement in duplicate this eleventh day of December, 1885.

SOUTHERN PACIFIC RAILROAD COMPANY,
By CREED HAYMOND, General Counsel.

WM. H. LAWRENCE,
A. F. GREEN,
JOHN MULLEN,

Committee of the Board of Supervisors of San Mateo County.

I hereby certify that in pursuance of the foregoing agreement the said Southern Pacific Railroad Company, on the eleventh day of December, 1885, paid into the Treasury of the County of San Mateo, for the uses and purposes mentioned in said agreement, the sum of \$7,613 30 in United States gold coin.

I further certify that the County of San Mateo has had the use of the money, in said agreement referred to as having been paid to Rhodes & Barstow, since the sixth day of September, 1882; and that the said sums more than pay off and discharge the principal, penalties, attorneys' fees, costs, interest, and all other things claimed in the complaint referred to in the foregoing agreement.

Witness my hand and the seal of the County of San Mateo this eleventh day of December, 1885.

[SEAL.]

GEO. BARKER,
County Auditor.

December 11, 1885.

Southern Pacific Railroad Company to County of San Mateo, Dr.

State and county taxes for fiscal year 1881-2, paid under the telegraphic direction of Judge Sanderson, and under agreement, a copy of which is hereto annexed, the original being on file in the law department: \$2,426 50; \$3,487 95; \$1,698 85; total, \$7,613 30.

December 12, 1885.

Received from the Southern Pacific Railroad Company seven thousand six hundred and thirteen thirty one hundredths dollars, in full for above account.

[Indorsed]: S. P. R. R. No. 650. \$7,613 30. Name, San Mateo County. Place, San Mateo. For State and county taxes. Year, 1881-82. When paid, December 15, 1885. Chargeable to taxes in suspense. I certify that the within account, amounting to \$7,613 30, is correct. Sanderson, by Haymond. Computations examined by Geo. T. F. Approved, V., Supt. Allowed, T. H.

At a stated term, to wit, the July term, A. D. 1886, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the District of California; held at the Court-room in the City and County of San Francisco, on Monday, the twelfth day of July, in the year of our Lord one thousand eight hundred and eighty-six. Present: The Hon. Lorenzo Sawyer, Circuit Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA)
 vs.) No. 4008.
 THE CENTRAL PACIFIC RAILROAD COMPANY.)

On motion of E. C. Marshall, Esq., Attorney-General of the State of California, it is ordered this cause be dismissed and a judgment entered herein accordingly.

[Indorsed]: No. 4008. U. S. Circuit Court, Ninth Circuit, Northern District of California. The People of the State of California vs. The Central Pacific Railroad Company. Certified copy of order.

At a stated term, to wit, the July term, A. D. 1886, of the Circuit Court of the United States of America, of the Ninth Judicial District, in and for the District of California, held at the Court-room at the City and County of San Francisco, on Monday, the twelfth day of July, in the year of our Lord one thousand eight hundred and eighty-six. Present: Hon. Lorenzo Sawyer, Circuit Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA)
 vs.) No. 4009.
 THE SAN PABLO AND TULARE RAILROAD COMPANY.)

On motion of E. C. Marshall, Esq., Attorney-General of the State of California, it is ordered that this cause be dismissed and a judgment be entered herein accordingly.

[Indorsed]: No. 4009. U. S. Circuit Court, Ninth Circuit, Northern District of California. People of the State of California vs. The San Pablo and Tulare Railroad Company. Certified copy of order.

At a stated term, to wit, the July term, A. D. 1886, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for

the District of California, held at the Court-room in the City and County of San Francisco, on Monday, the twelfth day of July, in the year of our Lord one thousand eight hundred and eighty-six. Present: The Hon. Lorenzo Sawyer, Circuit Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA)
 vs.) No. 4010.
 THE NORTHERN RAILWAY COMPANY.)

On motion of E. C. Marshall, Esq., the Attorney-General of the State of California, it is ordered that this cause be dismissed and a judgment entered herein accordingly.

[Indorsed]: No. 4010, U. S. Circuit Court, Ninth Circuit, Northern District of California. The People of the State of California vs. The Northern Railway Company. Certified copy of order.

At a stated term, to wit, the July term, A. D. 1886, of the Circuit Court of the United States of America, of the Ninth Judicial District, in and for the District of California, held at the Court-room in the City and County of San Francisco, on Monday, the twelfth day of July, in the year of our Lord one thousand eight hundred and eighty-six. Present: The Hon. Lorenzo Sawyer, Circuit Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA)
 vs.) No. 4011.
 THE CALIFORNIA PACIFIC RAILROAD COMPANY.)

On motion of E. C. Marshall, Esq., Attorney-General of the State of California, it is ordered that this cause be dismissed, and that judgment be entered herein accordingly.

[Indorsed]: No. 4011. U. S. Circuit Court, Ninth Circuit, Northern District of California. The People of the State of California vs. The California Pacific Railroad Company. Certified copy of order.

At a stated term, to wit: the July term, A. D. 1886, of the Circuit Court of the United States of America, Ninth Judicial Circuit, in and for the District of California, held at the Court-room in the City and County of San Francisco, on Monday, the twelfth day of July, in the year of our Lord one thousand eight hundred and eighty-six. Present: The Hon. Lorenzo Sawyer, Circuit Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA)
 vs.) No. 4012.
 THE SOUTHERN PACIFIC RAILROAD COMPANY.)

On motion of E. C. Marshall, Esq., Attorney-General of the State of California, it is ordered that this cause be dismissed, and that judgment be entered herein accordingly.

[Indorsed]: No. 4012. U. S. Circuit Court, Ninth Circuit, Northern District of California. The People of the State of California vs. The Southern Pacific Railroad Company. Certified copy of order.

At a stated term, to wit: the July term, A. D. 1886, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the District of California, held at the Court-room, in the City and County of San Francisco, on Monday, the twelfth day of July, in the year

of our Lord one thousand eight hundred and eighty-six. Present: The Hon. Lorenzo Sawyer, Circuit Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA)
 vs.) No. 4013.
 THE CALIFORNIA PACIFIC RAILROAD COMPANY.)

Ordered that Honorable E. C. Marshall, Attorney-General of the State of California, be and hereby is entered as attorney of record for the plaintiff herein.

[Indorsed]: No. 4013. U. S. Circuit Court, Ninth Circuit, Northern District of California. The People of the State of California vs. The California Pacific Railroad Company. Certified copy of order.

At a stated term, to wit: the July term, A. D. 1886, of the Circuit Court, of the United States of America, for the Ninth Judicial Circuit, in and for the District of California, held at the Court-room in the City and County of San Francisco, on Monday, the twelfth day of July, in the year of our Lord one thousand eight hundred and eighty-six. Present: The Hon. Lorenzo Sawyer, Circuit Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA)
 vs.) No. 4014.
 THE CENTRAL PACIFIC RAILROAD COMPANY.)

Ordered that E. C. Marshall, Esq., be and he hereby is entered as attorney of record for the plaintiff herein.

[Indorsed]: No. 4014. U. S. Circuit Court, Ninth Circuit, Northern District of California. The People of the State of California vs. The Central Pacific Railroad Company. Certified copy of order.

At a stated term, to wit: the July term, A. D. 1886, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the District of California, held at the Court-room in the City and County of San Francisco, on Monday, the twelfth day of July, in the year of our Lord one thousand eight hundred and eighty-six. Present: The Hon. Lorenzo Sawyer, Circuit Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA)
 vs.) No. 4015.
 THE NORTHERN RAILWAY COMPANY.)

Ordered that Hon. E. C. Marshall, Attorney-General of the State of California, be and he hereby is entered as attorney of record for the plaintiff herein.

[Indorsed]: No. 4015. U. S. Circuit Court, Ninth Circuit, Northern District of California. The People of the State of California vs. The Northern Railway Company. Certified copy of order.

At a stated term, to wit: the July term, A. D. 1886, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the District of California, held at the Court-room in the City and County of San Francisco, on Monday, the twelfth day of July, in the year of our Lord one thousand eight hundred and eighty-six. Present: The Hon. Lorenzo Sawyer, Circuit Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA
 vs.
 THE SAN PABLO AND TULARE RAILROAD COMPANY. } No. 4016.

Ordered that Hon. E. C. Marshall, Attorney-General of the State of California, be and he hereby is entered as attorney of record for the plaintiff herein.

[Indorsed]: No. 4016. U. S. Circuit Court, Ninth Circuit, Northern District of California. The People of the State of California vs. The San Pablo and Tulare Railroad Company. Certified copy of order.

At a stated term, to wit: The July term, A. D. 1886, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the District of California, held at the Court-room in the City and County of San Francisco, on Monday, the twelfth day of July, in the year of our Lord one thousand eight hundred and eighty-six. Present: The Hon. Lorenzo Sawyer, Circuit Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA
 vs.
 THE SOUTHERN PACIFIC RAILROAD COMPANY. } No. 4017.

Ordered that E. C. Marshall, Esq., Attorney-General of the State of California, be and he hereby is entered as attorney of record for the plaintiff herein.

[Indorsed]: No. 4017. U. S. Circuit Court, Ninth Circuit, Northern District of California. The People of the State of California vs. The Southern Pacific Railroad Company. Certified copy of order.

At a stated term, to wit, the November term, A. D. 1885, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the District of California, held at the Court-room in the City and County of San Francisco, on Monday, the eleventh day of January, in the year of our Lord one thousand eight hundred and eighty-six. Present: The Hon. Lorenzo Sawyer, Circuit Judge; the Hon. George M. Sabin, U. S. District Judge of Nevada.

THE PEOPLE OF THE STATE OF CALIFORNIA
 vs.
 THE SOUTHERN PACIFIC RAILROAD COMPANY. } No. 3264.

This cause, heretofore argued and submitted to the Court for consideration and decision upon the motion to amend the record herein in certain particulars, having been duly considered, it is ordered that said motion be and the same hereby is denied.

[Indorsed]: No. 3264. U. S. Circuit Court, Ninth Circuit, Northern District of California. The People of the State of California vs. The Southern Pacific R. R. Co. Certified copy of order.

MONDAY, February 25, 1889.

LORENZO SAWYER.

Called and sworn.

MR. JOHNSON: Judge, you are Circuit Judge of the Ninth District?
 Answer—For the Ninth Circuit.

Q. For the District of California? A. Yes, sir.

Q. How long have you been in that capacity, Judge? A. A little over twenty years. My name went in on the sixth of December, 1869.

Q. I will ask you, Judge, whether or not the findings were signed and judgment rendered before you in the tax cases of 1883, 1884, and 1885? A. They were; yes, sir.

Q. More particularly with reference to the tax cases of 1884. Just let me see the record, there, please. There has been some question about some findings that were signed in the tax cases of 1884; that is, for the taxes of 1884. I wish you would please look at these findings. This is a case against the Central Pacific Railroad Company; and give us your opinion whether or not the pasters there appear to be the same pasters on these findings; whether these pasters were on at the time you signed the findings or not? A. I guess you have got the wrong package.

Q. I asked for 1884?

MR. DUNN: Here it is. That is 1883. Here is 1884.

THE WITNESS: There is another one I have looked at particularly. I have not any doubt of it.

MR. JOHNSON: You think that these pasters were on? A. Yes, sir. I will tell you how it came about. There were a great many of those cases. We had to print portions of the findings to suit the different cases.

Q. And there were references also to other cases. These are the original papers? A. Yes, sir.

Q. Just state whether, in your opinion, all these pasters were on at that time? A. I haven't any doubt about it.

Q. They were all on? A. Yes, sir.

Q. Who were the attorneys for the people? A. Mr. Marshall and Mr. Baggett.

Q. And for the defendant? A. I think Mr. Creed Haymond.

Q. And in the tax cases of 1883, who were the attorneys? A. 1883; well, I am not certain whether Hart was Attorney-General or not then; the papers will show. Whoever was Attorney-General appeared.

Q. Was there any evidence introduced in the tax cases of 1883, 1884, and 1885; any of them? A. That last batch?

Q. Sir? A. That last batch I decided all together.

Q. Yes, sir. A. There was a stipulation filed in Court. No, sir; there were none of them actually tried. It was regarded as a mere formal matter. There was a stipulation there that those cases be submitted on the evidence in certain other cases which were then on appeal to the Supreme Court of the United States.

MR. DUNN: The Santa Clara case? A. Yes, sir; the stipulation is there very likely. This is the state of affairs at that time which you want to understand in order to appreciate things. You want to look at it from the standpoint at that time. There were several cases, about half a dozen that had been thoroughly tried from the beginning, right straight through, and every point litigated, in which Judge Field and myself sat. And there were about half a dozen of those; I think they were selected in so far as to present all the points. They were on appeal to the Supreme Court of the United States. They covered the whole ground; covered every possible

point there was. A great many points they possibly care nothing about except as a makeweight.

MR. JOHNSON: Here is the transcript of the record of the tax cases of 1884. There is the stipulation you refer to? [Showing.] A. Yes, sir; that is probably the stipulation. Well, now then, the railroad company wanted to pay what they admitted to be due on this last batch, that is, 1884.

Q. There is another batch, 1885? A. Well, along there somewhere; they wanted to pay a certain amount of taxes, but under protest, nevertheless; but they were willing to pay so much only. But, then, there was a stipulation that those cases, that all the cases, should abide the result of those that were on appeal. And they were simply to pay—to put it in a position so that the Attorney-General could receive the money and the company could pay it over, and then if there was anything besides that, such as penalties and interest, and all that sort of thing, they could adjust them upon a decision of the Supreme Court in those cases that were up on appeal. Nobody supposed for a moment that any of these others would have occasion to go to the Supreme Court of the United States. They were put in a shape to get the money.

Q. The reason the tax cases of 1884 showed that steamers and fences were assessed was because of a stipulation? A. Yes, sir; they submitted them on a prior case; because the finding was in those cases. I have no doubt they supposed—they hadn't the slightest idea these cases would come before the Courts here. They supposed they would be settled and disposed of by the cases pending in the Supreme Court. Nobody was more chagrined than I was that after we had taken all the trouble we did, that the Supreme Court should turn it off on a point that we didn't care anything about. In the meantime the subsequent cases were decided. When the cases came up they put in no evidence, but submitted it on the testimony in the prior case, with the reservation in some cases that if they chose they might put in the affidavit of the Clerk of the Board of Equalization.

Q. That was the case of 1883? A. That was the last tax case. They might put in that if they chose to do it.

Q. The clerk never appeared before you? A. No, sir; and never filed those affidavits. I suppose they thought it was not necessary. They were submitted on the testimony of those cases referred to in the stipulation; and I directed the attorneys of the plaintiff to draw up the findings, and they did. There were a good many of them, and it took some time to do it. When they came with the findings I turned them over to General Marshall and Mr. Baggett, to examine and see if they were correct or not. And this one came back to me; this one of them came back to me. There is a pencil mark there; I think it is in Mr. Baggett's handwriting—they objected to these because there was no evidence supporting it. There was evidence, there was this stipulation, and the finding in all those cases—you will look and see in the findings there—this finding is copied from those cases. This here, you see, has adopted that; that is too discursive. It went over a great deal of ground that the testimony did not cover. You see here again, that I struck that all out, and appended that which covered the testimony in the prior cases. There is one which I struck out without substituting anything.

Q. In the decision of the Supreme Court of last year in these tax cases, that decision goes off on the ground that either fences, steamers, or Federal franchises, some one or other of those constituents entered into this and invalidated the entire assessment? A. Yes; that first one went off on the assessment of fences. That is what surprised me. Now, the first case

went off on that. Now, the second case went off mainly on the fact that the franchise granted by the United States, which is by far the most valuable part of the franchise, is included in the assessment. That is a much broader ground, and it is much more important than the fences. Neither party cared anything about them, except that it might help them to win the cause if they failed in anything else. In the last case it went off on the assessment of the franchise.

Q. On the steamers also? A. In one or two cases it did. But, now, I don't think my understanding is that the plaintiff's counsel did not make those points in the Supreme Court. But the Supreme Court decided the case on the franchise mainly, and then referred to some of them. The same point was found as in the former one, of the fences and steamers. Really, they put their decision on the franchise derived from the Government of the United States.

Q. Now, here is the steamboat case: "By the Constitution of California two modes of assessment for taxation are prescribed; one, by a State Board of Equalization; the other, by county Boards and local Assessors. All property is directed to be assessed in the county, city, town, etc., in which it is situated, except as follows, to wit: The franchise, roadway, roadbed, rails, and rolling stock of any railroad operated in more than one county are to be assessed by the State Board and apportioned to the several counties, and so forth. By an Act of the Legislature of California (Section 3665 of the Political Code) the State Board is required to include in their assessment steamers engaged in transporting passengers and freights across waters which divide a railroad. This Act was held by the Supreme Court of California, in *San Francisco vs. Central Pacific Railroad Company* (63 Cal. 469), to be contrary to the Constitution, and steamboats were held to be assessable by the county Board, and not by the State Board. This Court, following that decision and that of *Santa Clara vs. Southern Pacific Railroad Company* (118 U. S. 394), in regard to the assessment of fences, holds that the assessment of the steamers of a railroad company by the State Board is in violation of the Constitution of the State of California and void, and being inseparably blended with the other property assessed, it makes the whole assessment void." A. Now, that is one point; but the main point was the assessment of the franchise. I think they are mistaken about there being steamers assessed there; I think they are mistaken about that. There were half a dozen cases went up; fences did not appear in all of them. I have looked at some of them. The fences are not in and the steamers are not in. I don't remember that there is any finding we made where the steamers were assessed as steamers.

Q. Except the general finding that all property included in Section 3665 should be assessed: "The State Board of Equalization must meet at the State Capitol on the first Monday in August, and continue in open session from day to day, Sundays excepted, until the third Monday in August. At such meeting the Board must assess the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county. Assessment must be made to the corporation, person, or association of persons owning the same, and must be made upon the entire railway within the State, and must include the right of way, bridges, culverts, wharves, and moles upon which the track is laid, and all steamers which are engaged in transporting passengers, freights, and passenger and freight cars, across waters which divide the road. The depots, shops, stations, and buildings, erected upon the space covered by the right of way, are assessed by the Assessor of the county wherein they are situate. Within ten days after the third Monday in August, the Board must apportion the total assessment of the

franchise, roadway, roadbed, rails, and rolling stock of each railway, to the counties or cities and counties in which such railway is located, in proportion to the number of miles of railway laid in such counties and cities and counties." A. My attention might not have been drawn to it. This is the fact, as the testimony in those first cases showed, and you will find it there, and you may find it in some one or two of these recent cases. The testimony showed in regard—I think it was the Southern Pacific Railroad—that in assessing, they assessed the space of four miles between the wharf in San Francisco and the wharf in Oakland as four miles of railroad; not assessing the steamers as steamers, but assessing it as four miles of railroad.

Q. That was the case of the Southern Pacific? A. Yes, sir.

Q. The tax case of 1884? A. No; I am now speaking of the first case. Now some one of these cases, of the later cases, referred to that as the testimony in that case, and necessarily the same findings followed.

Q. That is the reason you found the way you did, because other cases were referred to? A. Yes, sir.

Q. Look at the case of *The People vs. The Southern Pacific Railroad*, the case of 1884? A. They assessed that as road. They didn't mention steamers. Then there was an effort to prove about the Solano in some of these cases; that these steamers were assessed; that was struck out; that four miles from Oakland to San Francisco was found in these earlier cases to be assessed; and some one of these later cases referred to the stipulation in those cases.

MR. COOMBS: You say that the testimony showed that the steamers were assessed; what was the nature of the testimony; was it documentary? A. I think they had the Board of Equalization before us; I think so.

Q. Did you have their books? A. Yes, sir.

Q. And found from the testimony of the Board that they had made the assessment? A. I think so; that is my recollection. It is five years ago, and I have not looked over this matter at all.

MR. DAMRON: That was before the tax case of 1883? A. Yes, sir; the distance of four miles from the wharf at the end of the road, the Bay in San Francisco, across the Bay of San Francisco to the wharf of said defendants' road at Oakland Mole, Alameda County, over which freight is carried by the said railroad, was assessed to the said defendant as four miles of said road, at the same amount as any other portion of said road.

Q. Now if there had been a stipulation that steamers or fences were not assessed for any of those years, as a matter of course the finding would have conformed to that agreement? A. Yes, sir.

Q. But it was owing to the stipulation? A. Now, in these last cases the stipulation referred to some of these cases. And this one case was submitted on the testimony in those cases; and then there was a provision added that they might file an affidavit of the Clerk of the Board of Equalization as to whether they did in fact in those years assess them or not. Those affidavits were never filed; at least I never saw them. The new finding went off on the prior case.

Q. Did all these cases that went to the Supreme Court of the United States have a finding that the Federal franchise had been assessed?

MR. JOHNSON: Oh, no.

MR. SEAWELL: Some of them didn't involve a Federal franchise.

MR. DIBBLE: There was a fundamental franchise question in all the cases, under the fourteenth amendment.

THE WITNESS: Each finding was adapted to each particular road.

MR. DUNN: Do you know in whose handwriting this is? "Said assess-

ment included all property and kinds of property mentioned in Section 3665 of the Political Code of California," etc. [Showing.] A. I don't know whose handwriting that is, but I think it came to me with that in it, and there was no objection to the finding.

Q. Do you recollect of any objection to that finding in any of the other cases? A. No, sir; I don't recollect any objection to any findings, except those about the fences and steamboats. That, I am satisfied, was in there when it came to me, and in there when it went to the other parties.

MR. DIBBLE: There was a gentleman here the other night, and I want to ask the committee if any member of the committee knows who he was or is? He was a tall gentleman. He made a remark to me the other evening and I didn't at the time think of the significance of it. We were speaking of Harvey Brown being here, and he said Harvey Brown couldn't tell me anything about it, because he had prepared the findings himself. I spoke to Harvey Brown, and he said he did not prepare the findings. Mr. Haymond was in Europe at the time. Brown says he didn't prepare the findings. They had some outside attorney.

MR. SEAWELL: It was Governor Johnson.

MR. DIBBLE: Then we must have him here.

MR. JOHNSON: The records in these tax cases consist of the complaint, the demurrer, if any, the answer, the findings, and the judgment? A. Yes, sir.

Q. Anything else? That is the record, is it? A. Some of them have got the stipulation and the petition to remove.

Q. That makes up the record in those cases? A. Yes, sir.

Q. And in 1885—you stated your recollection as to the attorneys in 1884. In 1883 and 1885 were they pretty much the same attorneys? A. I think they were; I don't remember when Mr. Marshall came in. It seems to me Mr. Hart was in.

Q. Mr. Marshall was in in 1883, 1884, and 1885? A. He came in in January, 1884.

MR. COOMBS: He was elected in 1882.

THE WITNESS: Nobody ever supposed that any of these cases would ever go to the Supreme Court. Perhaps they were not as acute in looking out for those things as they otherwise would have been. It may be they did not contest them quite as sharply as they would if they had been the original case. But allow me to express my opinion; I think those gentlemen acted in entire good faith. I saw nothing to indicate anything to the contrary. I think they contested every point.

MR. DUNN: Now, when the Santa Clara case was tried, there was some oral testimony to show that fences had been assessed, and yourself and Judge Field found that fences had been assessed? A. Yes, sir.

Q. Our Supreme Court decided in June, 1883, about the time the Santa Clara case was tried and determined, that the State Board had no authority to assess fences; that they should be assessed by local Assessors. Of course, the Board, of which I have been a member since 1883, have not assessed those things? A. I don't remember ever seeing it in the Supreme Court until I saw it referred to in our Supreme Court decisions.

Q. We were especially careful to avoid the assessing of steamers, and while there was no decision of the Supreme Court, we thought it was certainly policy for us to avoid assessing fences when you gentlemen decided that they should not be assessed? A. That was either overlooked in the stipulation—we made a proviso that they might file those affidavits; they were never filed.

Q. The agreement in this stipulation was that the evidence of the Board

of Equalization should be taken as to whether fences had been assessed, and as to whether steamboats had been assessed: and, of course, that affidavit was never filed, and, consequently, you had no evidence as to these particular assessments? A. No, sir; it went back to the testimony of the prior case.

Q. This distance across the bay, the records of the Board of Equalization will show that the Board assessed four miles in San Francisco, down to the water, and then we jumped across the water and commenced again at the Oakland Mole. If you notice the finding, that four miles contained in the Southern Pacific: it does not cross over at all? A. That was an oversight.

Q. The Southern Pacific for 1884; the finding shows that there we assessed four miles on the Southern Pacific road—it was intended to apply to the Central Pacific? A. That was an oversight.

Q. Of course that was intended to be in the Central Pacific? A. Yes, sir; I know we had to change some findings from one to the other; where we got a finding pasted on to the wrong one we had to change it. This is very likely the same kind of a mistake. In those numerous cases mistakes of that kind will sometimes occur.

MR. COOMBS: How many cases were pending at that time? A. Fifty or sixty; all the counties in the State. I know in one place we had to transfer the finding from one to another; it got stuck on to the wrong one.

Q. Some of those were branch lines and some belonged to the regular system? A. Yes, sir.

MR. JOHNSON: Since, therefore, the tax case of 1882, there has been no evidence in your Court upon which stipulations were based, except prior stipulations? A. No, sir.

MR. DUNN: The decision in case of California and Northern Railway Company shows that the point that the Supreme Court decided upon was that the steamers were blended in the assessment? A. That must have been under the general provision; that didn't attract my attention. Probably they didn't notice it either.

MR. JOHNSON: There was no objection raised? A. Probably they didn't notice it.

Q. Of course you wouldn't object to it? A. My attention was not attracted to it, that it would cover it. I saw no specific testimony in the case.

MR. DUNN: The point I desire to impress upon the committee is this: that there certainly could not have been any Federal franchise in the California Pacific or the Northern Railway; there were no fences in there. Consequently the Supreme Court would have been compelled to determine this question as to whether our system of assessment was in violation of the law or not. But it went off on some other question.

THE WITNESS: Look at your record. Just take this conglomerated mass and turn to your record, and you will find there were no steamers in that.

MR. DUNN: You will find in all these cases there were steamers. A. Then that probably was an oversight.

Q. There it is, you see; this is the California Pacific. A. It never occurred to me before that we included it. There was no objection made to it.

Q. Do you remember the fact as to whether there was not a stipulation made at the time those cases were before the Court, which did not contain the question of Federal franchise, that if the other cases which didn't go to the Supreme Court of the United States should be reversed upon points not involved in those cases, that then the State might take advantage of that and try those cases? A. I don't believe I ever saw any stipulation of that

kind. That would be an after consideration. I don't believe I ever saw such a stipulation.

Q. There are differences between these roads; some involved Federal franchises, and some did not. In case Federal franchises were not involved there was an agreement to that effect; that then these other cases might be opened with new findings? A. That would not come before me in the trial of these cases. Now, if you hadn't called my attention to that, I should never have thought that included steamboats.

Q. That is the general finding? A. Yes, sir.

MR. JOHNSON: Section 3665, as amended in 1883, speaks of excepting steamboats; but then it is described as property in Section 3665, and this general finding is that the property described in Section 3665 was assessed, excepting depots, shops, and so forth. A. That was in general terms.

Q. If there had been a special finding, your attention would have been called to it? A. Yes, sir.

MR. DUNN: Here is that decision, Judge? [Showing decision.] A. They got that in under the general clause; that never attracted my attention before.

Q. There was no objection urged before you? A. No, sir; very likely it escaped their attention just as it did mine. That is the one that has got this written; it did not attract my attention. And, in fact, as I said before, perhaps we would have been more astute if we supposed it would ever come before us again at all. The question was before the Supreme Court, and we never expected these cases to come up before us again. Certainly nobody was more chagrined in reference to the matter than I was.

MR. DUNN: That is one of the objections we have had to the decision in the California Pacific Railroad case. We would have had a decision in that, if that case had not gone off on that point.

MR. DAMRON: The Supreme Court did decide the case of *The People of the State of California vs. The Central Pacific Railroad Company* upon the Federal franchise question.

MR. DUNN: It is one of the points.

MR. DAMRON: Another one was the fences, etc. Now then, the stipulation was intended to cover that point, so that if the Supreme Court did reverse it upon questions not in that first case, that the other cases might be taken to the Supreme Court, after having special findings made. Were judgments ever entered in the cases?

MR. SEAWELL: The Federal franchise was the only question of principle.

THE WITNESS: I don't remember that I have ever seen that stipulation before, and I don't know as I could decide that before the question was brought up before me, and considered. If you were to bring the case up, and we tried them, I would hear them; but I am not prepared to say now as to that matter.

MR. DAMRON: Would these other cases, I don't know the titles of them—the California Pacific and the Northern—were they brought in the Circuit Court?

MR. DUNN: Yes, sir.

THE WITNESS: There were some findings I struck out.

MR. COOMBS: What is the status of those cases now? A. Judgment for defendant, I believe. There is one—that must have been one of the old cases—there must have been testimony to establish that finding in there somewhere. There must have been testimony to establish that finding.

MR. DUNN: I presume that would be the record of the Board of Equalization as to the description of the property? A. That must have gone off on the testimony of one of those first cases.

MR. DUNN: I think so, because the records were never presented in these cases. A. It went off on the stipulation in one of these early cases. Here are some of these last words that I struck out. [Showing.]

Q. About the fences and the steamboats? A. Yes, sir.

Q. But still they are contained in that general provision? A. Yes, sir; you see that escaped my notice; my attention was not attracted to it.

MR. JOHNSON: The section was probably not read to you at all. A. Very likely the attorneys overlooked it in some way; and, especially, as I say, they never expected in these cases that it would be a matter of any consequence. Of course they would not be as astute as they would in trying the original case.

MR. JOHNSON: In appealing a case, or suing out a writ of error, there is nothing but sending up the transcript? A. Yes, sir; in all of these last cases it went up, these findings were not in it, but the franchise I suppose was. I don't think the decision met the point as to the steamers or fences.

MR. DUNN: The case of 1885, my recollection is that in one of the cases it did contain a provision that the steamboats were stricken out at the suggestion of the defendant, and I think that is the only case. A. Yes, sir.

Q. Except this one case? A. Yes, sir; my attention had not been attracted to that before this morning, in any of those cases. My attention was not attracted to that, and I presume the attention of the attorneys was not. They were not as astute as they might have been.

EVENING SESSION.

HARVEY BROWN.

Called and sworn.

MR. LEZINSKY: Judge Brown, were you the attorney of record for the various railroad companies in what are known as the tax cases; were you not? Answer—In a large number; yes, sir.

Q. You were the attorney of record in the cases particularly for the taxes of 1883-4? A. I presume so.

Q. Well, I will show you the papers in those cases. These are the papers in the case of *The People against The Central Pacific Railroad Company*, in the case known as No. 3263. A. Mr. Foulds appears to have been the attorney of record.

Q. He signed the answer, but you signed the stipulation upon which these cases were submitted to the Court? A. It appears to have been signed by—that is Mr. Haymond's handwriting.

Q. Do you know anything concerning the findings? A. What is the date of that stipulation, if you please?

Q. October 21, 1884. Do you know anything concerning the findings in this case? A. No, sir; I don't know anything about it. It is something I had nothing to do with; in getting up the findings.

Q. You simply know nothing concerning the findings in that case? A. No, sir.

Q. Here is the record of the case.

MR. CROSS: What case is that?

MR. LEZINSKY: Three hundred and sixty-two.

MR. CROSS: Isn't that one of the State cases?

MR. LEZINSKY: All the cases we treat with in this case are State cases.

MR. CROSS: You mean to say that those you are going to ask about to-night are State cases?

MR. LEZINSKY: I mean to say, all these cases we are treating here, are State cases.

MR. SEAWELL: That may be, so far as the examination is concerned, but I don't know that we are restricted to them.

MR. CROSS: Those Santa Clara and San Mateo cases were county cases.

MR. LEZINSKY: The record here is all of State cases.

MR. SEAWELL: That is right.

MR. LEZINSKY: Now this is the case for the taxes for 1884 against the Central Pacific Railroad Company? A. Yes, sir.

Q. You were the attorney of record in that case? A. Yes, sir.

Q. And you signed the stipulation? A. Yes, sir.

MR. CROSS: What is the number of that case?

MR. LEZINSKY: Three thousand six hundred and sixty-eight.

Q. And you signed the stipulation upon which this case purports to have been submitted? A. Yes, sir.

Q. Now the seventh clause of this stipulation is that the case is hereby submitted to the Court for its findings and determination upon testimony offered by the defendant tending to prove the averments in Subdivisions 25 and 25 A of said answer, and upon testimony offered by said plaintiff tending to disprove the testimony in the said paragraph contained? A. Yes, sir; it so appears.

Q. Calling your attention to paragraphs 25 and 25 A of the answer; paragraph 25 of the answer is an allegation that the State Board of Equalization is making said pretended assessment of said roadway of said defendant, it willfully, etc.; and paragraph 25 A of said answer is a paragraph containing the allegation that the State Board of Equalization included in the assessment the value of steamboats? A. Yes, sir.

Q. Now, I will ask you whether or not any testimony at all upon those points was offered before the Court? A. I don't know, sir. I was not in Court at the time that case was tried or disposed of.

Q. Do you know that the case was ever tried? A. I don't know anything about it, except I understood there were a lot of cases that were submitted in the same way, on stipulation; and whether testimony was taken or not I don't know. I was not there at the trial. I can tell you in a word what I know, if you will allow me. There were a lot of cases; I don't know what year—

MR. DIBBLE [Interrupting]: Where there is not any dispute of fact as to this matter I don't see the use of taking up the time of the committee. Really, there isn't any dispute here. It was fully explained by Judge Sawyer here this morning, and there isn't any dispute between anybody that judgments were entered in these cases by stipulation; that they were submitted upon testimony taken in the Santa Clara case. Nobody pretends that any evidence was taken in any of these cases, except upon those three cases.

MR. JOHNSON: I understood it was submitted upon stipulation that the evidence taken in the other cases should be admitted in this.

MR. LEZINSKY: This is simply preliminary to the question that I will ask Mr. Brown.

MR. SEAWELL: I understand that no one claims that the cases were actually tried; they were submitted on testimony and stipulation taken in other cases? A. They were submitted upon testimony taken in the case in which I participated in the trial of. There were the San Mateo cases, and other cases; they were tried at great length in the Circuit Court, and I partici-

pated in those trials from the first to the last, and participated in preparing the findings in those cases. In reference to those other cases which were submitted on stipulation, or stipulation and some testimony, I don't know anything about them, for I was not in Court at the time; although I am the attorney of record; and some papers I signed in person and some papers were signed by other parties, as any lawyer in the department had a right to sign my name.

MR. CROSS: Mr. Lezinsky, was this one of the cases that Mr. Delmas testified to the other evening?

MR. LEZINSKY: Mr. Cross, I don't know really whether that was; I don't know really whether any such stipulation was made. I have no knowledge that any such stipulation was made.

MR. CROSS: Mr. Delmas stated that there were a number of cases which were tried, and then it was stipulated that the evidence taken in that case should be considered as taken in all those cases, so far as applicable to those cases. Do you understand that this is one of those cases?

MR. LEZINSKY: This is a subsequent case. Mr. Delmas had nothing to do with these cases; he testified to that.

Q. Certainly when you signed this stipulation you knew what its objects were? A. I suppose I glanced it over. Of course, if I sign a thing in person I look it over to see what it is at the time.

Q. Now, concerning the seventh clause of this stipulation, what was the intention of that clause of the stipulation? A. Well, sir, that is more than I can tell you, what the intention was. I will read it and see if I can glean it from the stipulation itself: "And upon testimony offered by plaintiff tending to disprove the averments in said paragraphs contained."

Q. I might suggest to you, Judge, wasn't the object or the intention of that clause of the stipulation, that testimony of this character that was contained in this other case which was mentioned should not be applicable to this case, but that testimony upon these points should be offered in these cases? A. Well, I think that would be capable of two constructions, perhaps; that would be one construction, perhaps, to place upon it. I have not read the stipulation to ascertain the full bearing of it. I should suppose that if that referred to testimony offered in this case that it must have been offered at this time, else it would have been "by testimony to be offered by defendant." That does not appear to be the case. It is "by testimony offered by the defendant," and back here it relates to testimony in cases already determined. I don't know who is the author of that stipulation; I don't know, and therefore can't determine what was in the mind of the party who offered it. But it seems to me that if testimony was to be offered it would so state, but it does not appear.

MR. CROSS: I should think that would be determined by the committee, by what the record says. I don't understand this method of changing the record by calling witnesses as to its purport.

MR. LEZINSKY: I would like to ask you whether or not you know who prepared the findings that are a part of that record? A. I don't know, sir. I know I didn't, that is very certain.

Q. You don't know who did? A. Undoubtedly it was prepared in the office, there, by some one in the employ of the company. There is no doubt about that, because the findings, as I understand it, were in favor of the defendant.

MR. LEZINSKY: Yes, sir.

MR. CROSS: Is it a practice in the United States Circuit Court for the Judge to order the party in whose favor the decision is, to prepare the findings? A. I so understand it, sir. At all events, in the cases we tried at

such length, we prepared the findings; and there was a great deal of labor in doing so. The findings were submitted to the Court, and then objections were raised, and other findings were submitted, and finally the whole thing was submitted to the Court for determination. There was a vast amount of work attached to the matter of findings, and there were a great many objections raised to them, and it was some time before they were finally settled.

MR. LEZINSKY: Those were the cases of 1881-82? A. As I told you, I don't know what year they were; but they were the only cases that I know of that were tried at length in the Circuit Court. The Santa Clara case was one of them.

Q. They were all cases by the various counties against the railroad company? A. I think there were one or two cases—I think Judge Terry had brought one or two cases in the name of the State; the People on behalf of Fresno County.

Q. Well, now, you say you don't know who prepared these findings? A. I don't know; I didn't.

Q. Do you know who presented them to Judge Sawyer to be signed? A. That I don't know; I did not.

Q. Do you think that fact is capable of being ascertained in your office? A. Well, I should think so; it was somebody either in the office or somebody in the employ of the committee who prepared those findings and submitted them to the Court; but who it was I don't know.

Q. Then further than signing the stipulation, you had no further connection with the matter personally? A. No further personal connection with the matter. I cannot recollect that I had any further connection with it beyond the stipulation.

Q. And you yourself were not the author of the stipulation? A. No, sir.

MR. CROSS: I don't know that handwriting. Do you know that handwriting, Mr. Lezinsky?

MR. LEZINSKY: No, sir.

THE WITNESS: I can tell you that handwriting on that page [showing]. That is the handwriting of Mr. Cammett, a copyist in the office.

Q. The rest is printed? A. Yes, sir.

Q. That is simply the formal beginning of the findings? A. Yes, sir.

Q. Do you know whose handwriting that is in? I now call your attention to the finding, which is a portion of Finding 15? A. A portion of Finding 15.

Q. And is in these words: "Said assessment included all property and all kinds of property in Section 3665 of the Political Code, as amended March 9, 1883, excepting depots, stations, shops, and buildings erected upon space covered by the right of way, which last mentioned property was assessed, as provided in said section, by the local Assessors." A. That looks like the handwriting of James P. Brown, a clerk in the department and a son of mine; it looks like his handwriting, and I think it is.

Q. Did he have the matter of these findings in charge as principal? A. I presume he did. In fact he was more conversant with this class of litigation than anybody in the office.

MR. CROSS: Judge, referring to these findings, you are familiar with the practice in the Circuit Court and other Courts? A. Somewhat; yes, sir.

Q. Who generally prepares and presents findings? A. The winning party does. That has always been my experience in the matter.

Q. The attorneys for the winning party do? A. Yes, sir; that has been my experience.

Q. And the railroad party having won this case, it was the ordinary pro-

cedure for the attorneys for the company to prepare and present findings? A. Yes, sir; to prepare and present findings for the Court's approval.

Q. Were those findings signed just as presented, or were they altered? A. I don't know; I know the Court altered our findings in the case. I was present and saw them altered very materially.

Q. And these findings show upon their face that large numbers of them have been cut out, and interlined, and changed? A. Yes, sir.

Q. There is nothing unusual, then, in the practice; there is nothing unusual in this particular case from the ordinary practice of the Court in the fact that the attorneys for the winning party presented the findings? A. Not at all; it is the common practice, as I understand the practice.

MR. LEZINSKY: Nobody has ever disputed that statement; it has been reiterated and reiterated by every one connected with this matter. A. The party winning presents his findings to the Court.

Q. It is the practice in the State Courts as well? A. The opposite counsel suggests such amendments as he sees proper, and then the Court determines between them.

Q. Upon the hearing the Court determines what the findings shall be? A. Yes, sir. I know in our case we had several hearings before the Court came to a conclusion. It took a great deal of time to prepare the findings, and there was a great deal of labor attached to it, before a final conclusion.

Q. They were discussed before the Judge by the attorneys of the respective parties as to what the findings ought to be under the evidence and the record in the case? A. Yes, sir.

Q. Those cases you refer to now are cases for the years prior to this case? A. Yes, sir.

Q. Your statement is not at all connected with this case? A. No, sir.

Q. Do you know anything at all about it? A. No, sir.

Q. You don't know anything about them at all? A. No, sir.

MR. CROSS: You simply know what the practice was? A. Yes, sir.

GEORGE A. JOHNSON.

MR. LEZINSKY: General, there has been some statements made here to the effect that there has been an effort on the part of the State authorities to delay or hinder the decision by the proper authorities, of the question of whether or not the State Constitution upon the question of taxation of railroad corporations is at variance with the fourteenth amendment of the Constitution of the United States. I will ask you what has been the position of yourself and your office upon that point? Answer—I came into office in January, 1887. During the year 1887, I caused to be made an application to the Supreme Court of the United States for the advancement of these cases; that is to say, the following cases: The People of the State of California vs. The Central Pacific Railroad Company, involving the taxes of 1885; The People of the State of California vs. The California Pacific Railroad Company, involving the taxes of 1883; The People of the State of California vs. The Central Pacific Railroad Company, involving the taxes of 1883; The People of the State of California vs. The Southern Pacific Railroad Company, involving the taxes of 1883; The People of the State of California vs. The Northern Railway, involving the taxes of 1883. The taxes of 1884 were not appealed when I came into office, and I simply appealed those cases; that is, I appealed one of the cases.

Q. When you said the taxes of 1884, didn't you mean the taxes of 1885?

The taxes of 1885 were not appealed when you went into office? A. I think they were; I can tell you in a moment. I think the taxes of 1885 were appealed. Yes; here is the bond, filed July 28, 1886. The taxes of 1885 were appealed; the taxes of 1883 were appealed; but the taxes of 1884 were not appealed, and I took an appeal in one of the cases—the case of *The People vs. The Central Pacific Railroad Company*, which is No. 1157 in the Supreme Court of the United States. It is numbered there No. 1157. But, as I was going to say, during the first year of my term I made an effort to get those cases advanced, and I succeeded in getting them advanced; so the application for advancement was heard at the October term, 1887. The motion was granted for advancement, and the case came up early in January, 1888. The reason I had that motion made and took part in conferring in respect to what should be set out in the motion—the reason I did so was to have this very constitutional case settled that I speak about. That is to say, the constitutional question, whether or not the provision of the Constitution of California which prevents the railroads from deducting their mortgages—whether that is constitutional under the Constitution of the United States? I wanted to get that question settled. In other words, I wanted to get the Federal question settled, and my idea in getting this case advanced was to get the Federal question settled, so as we would know whether the provisions in our Constitution were in accordance with the provisions of the Constitution of the United States or not. In other words, if they were not constitutional, that the matter might come up for this Legislature—this present Legislature, now in session—and that this Legislature might submit a proposition to the people to amend the Constitution, if it required any amendment. So far as my office is concerned, and I believe so far as Mr. Dunn's office is concerned, I believe our efforts have been systematic to get the cases advanced, in order to have these Federal questions settled. I will state how I handled the case: For instance, there were some cases in which the Controller appointed Mr. Delmas as the attorney, and the case came up before Judge Levy, and he sustained the demurrer to the complaint, and judgment followed on the demurrer; and then Mr. Delmas appealed to the Supreme Court of this State. I was not so particular about getting those cases advanced, because they were State cases set up in that demurrer. What I wanted to get settled was the Federal question. So I made every effort I could to get the cases at Washington advanced, so as to get these Federal questions settled, hoping that the record would be eliminated in said cases, and the Court might see its way clear to pass upon those Federal questions. But the sequel was that the Court held that they were State questions which were involved in these cases submitted to it. In other words, they held that these cases involved either a Federal franchise or the assessments of steamers or the assessment of fences by the State Board of Equalization. That being so, I don't suppose there could be any pretense on the part of any one that those cases gained in the Supreme Court of the United States. In other words, if the State Board of Equalization assessed franchises that would be fatal; if they assessed fences that would be fatal to the case; and if they assessed steamers that would be fatal to the case. All these cases which were before the Supreme Court, at which I appeared there at Washington, in all of them the findings showed either that a Federal franchise was assessed by the State Board of Equalization, or that steamers were assessed, or that fences were assessed. So, as a matter of course, we are bound to lose those cases; there was no alternative.

Q. In the cases of 1884, what was the condition of those cases when you took your office? A. The cases of 1884?

Q. Those were the cases which you say you appealed? A. I think in 1884—the cases of 1884 had been decided some eighteen months before I came into office. Let me see; here are the findings: September 25, 1885. I went into office January, 1887; that would be fifteen months. These findings in the cases of 1884—that is to say, these mutilated cases, where these pasters occurred—those findings had been in the records of that Court fifteen months.

Q. And the judgment roll had been made up for fifteen months? A. Yes, sir; I had nothing to do with the making up of the record. That is to say, the judgments were all entered in the cases of 1883-4-5 before I came into office—the judgments were entered and the findings were signed. I just simply appealed. As a matter of course, I had nothing to do with these judgments. There was a stipulation, though, that the decision of one case should carry with it the decision of the other cases.

MR. SEAWELL: In two or three cases there, General, there is a stipulation. Those cases don't involve a Federal franchise. There is a stipulation that if the facts in these cases differ from the others, that there may be new findings, and that the cases may be appealed.

Q. Well, I have found it out. As far as that is concerned, as far as the taxes of 1880 and 1883 are concerned, my impression is that all these records show this: That these findings include all property which is described—all property and kinds of property mentioned in Section 3665 of the Political Code of California. That being so, if those cases had that provision in them, in the findings, why, under the decision of the Supreme Court of the United States, as I understand them, I don't think there is any doubt about them on the part of anybody. That language includes steamers, and that would be fatal to all the cases of 1883. In other words, I regard the taxes for 1883 as lost entirely, unless there is a reassessment; unless there is a reassessment by the Legislature to reassess the companies, I regard the taxes of 1883 as lost. I regard the taxes of 1884 as lost for this reason. Now, that case that was appealed was *The People vs. The Central Road, The People vs. The Central Pacific Railroad*. That case included—the findings included the Federal franchise, and included steamers. That is to say, included this language, that all property was included in the assessment by the State Board of Equalization, as described in Section 3665, except depots, stations, and such like. And it includes fences. So those three things being included, why, as a matter of course, that would be fatal to the entire case of 1884, because there would be the same point. As I take it, there would be the same case involved—the same questions involved in those cases of the Central Pacific, which was in all these other cases. And so therefore I maintain that the taxes of 1884 are lost. As far as the taxes of 1885 are concerned, the status of that seems to be something like this: The Supreme Court decided the case that was appealed; that is to say, *The People vs. The Central Pacific*, involving the taxes of 1885, they decided that adversely to the State, on the ground that there was a Federal franchise involved. But I am not sure that was the only point they decided that case upon, because if you will take the findings you will find this same language, too, as I recollect—if I am wrong I wish somebody would correct me—the language is, that the property assessed by the State Board of Equalization includes all the property mentioned in Section 3665.

MR. LEZINSKY: I don't think that is so. A. Is that not so?

MR. DAMRON: Yes; they decided on the ground of the franchise and on the ground of the steamers.

MR. SEAWELL: The case of the Northern Railway is where that stipulation

comes in? A. Here is the finding. Here are the findings in this case, involving the taxes of 1885: The State Board of Equalization in making the said assessment pretended to assess to and against the defendant the full cash value of said railroad, roadbed, rails, rolling stock, and franchise, as described in Section 3665, without deducting therefrom the value of the mortgage, etc. But there is something else that is in the finding. This is Finding 21: Said assessment included all property and kinds of property mentioned in Section 3665 of the Political Code of the State of California, as amended March 9, 1883, excepting depots, stations, shops, and buildings erected upon the space covered by the right of way, which last mentioned property was assessed by local Assessors, and excepting steamboats. Mr. Marshall made the following stipulation: "It is hereby stipulated by the parties to the above entitled action that a trial by jury is hereby waived, and that said cause shall be submitted upon the assessment roll for the year 1885-86, in so far as it relates to the taxes claimed in the complaint herein, and upon the testimony heretofore taken and submitted in this Court in other actions against the same party and against the Southern Pacific Railroad Company, the San Pablo and Tulare Railroad Company, the Northern Railroad Company, and the California Pacific Railroad Company, which testimony shall be treated as given in this case, and as though all the facts related as well to the assessment and taxes for the year 1885-86 as though said year had been mentioned in said testimony, except the testimony relating to the taxation of fences, which, for the purposes of this case, and by the consent of the defendant, is omitted."

Q. Is that all of that stipulation? A. That is all of this particular stipulation, but there is another stipulation I found out afterwards—I found out within the last ten days.

MR. HYDE: That is the one we saw in the city. We saw the original. A. Yes, sir; I believe so. Mr. Dunn says he found this out first within the last ten days also. There is another stipulation besides this. Here is a stipulation of the Northern Railway Company. I believe they are all copies; there are several cases, you know; that is, they are all copies of one original. That is the stipulation: "Circuit Court of the United States, Ninth Circuit, District of California. The People of the State of California vs. The Northern Railway Company, and three other companies, No. 4015." That is, I suppose, the Northern Railway Company. "It is hereby stipulated that jury trials in the above entitled actions are hereby waived, and that said cases may be submitted to the Court upon the testimony referred to in the stipulation this day made and filed in the case of The People of the State of California vs. The Central Pacific Railroad Company, subject to the same terms and conditions. It is hereby further stipulated that special findings of fact in all of the above entitled actions are waived. It is hereby further stipulated and agreed that the said case of the People of the State of California vs. The Central Pacific Railroad Company shall, by the losing party, be taken to the Supreme Court of the United States, and that the decision of the said Court in said case shall be applicable to, and be treated by each party as the decision of said Court in the above entitled actions, it being the intention and desire of the parties hereto to save the expense of separate writs of error, and that all of the above entitled actions shall abide the final decision of said Supreme Court of the United States in the said case of The People of the State of California vs. The Central Pacific Railroad Company, provided that said decision shall be made upon points involved therein. And if not so made, then the judgments in any of the above cases in which the point is not involved shall be set aside and finding of fact therein shall be made. San Fran-

cisco, California, July 14, 1886. Creed Haymond, attorney for defendants. E. C. Marshall, Attorney-General and attorney for plaintiff. Filed July 15, 1886."

MR. DAMRON: Isn't that same stipulation a part of the record in the case referred to there? Isn't that same stipulation in the three cases referred to in that? A. Yes, sir.

Q. Doesn't it appear in all those cases? A. Yes, sir.

Q. One of those cases was the case against the Central Pacific Railroad Company? A. Yes, sir.

Q. As a matter of fact that case was submitted upon facts involved in these cases? A. Yes, sir.

MR. SEAWELL: Your finding having been made in that case, it would not be covered—about the irregular assessment—that stipulation would not cover it? A. I say that is the question. Now I may make a motion to set aside these judgments in these other cases involving taxes in 1885; that would be for the Circuit Court of the United States to decide.

MR. DUNN: I think, Mr. Chairman, these other cases, the San Pablo and Tulare Railroad Company, the Northern Railway, and the California Pacific Railroad Company, I asked Mr. Haymond last Saturday morning if he would agree to set aside the judgment in these cases, and have them come before the United States Supreme Court with the record taken in them. A. What did he say to that?

MR. DUNN: My recollection is that he said he certainly would; and he turned to Mr. Storke and said: "You can make up the finding entirely in accordance with your own wishes, and I will agree to have the case go up on the record you make."

MR. DAMRON: My recollection is that while we were at San Francisco, the case of *The People of the State of California vs. The Central Pacific Railroad Company*, which was decided in the 127th U. S., contained a stipulation that if that case was decided by the Supreme Court of the United States upon any point or points not involved in these other three cases, that then the judgments which were entered in the other three cases in favor of the defendant, might be reopened, and special findings filed, and an appeal might be taken from those new findings to the Supreme Court of the United States, in which would be directly decided our right to assess under the Constitution. Now, I asked when that was done—I don't remember whether I got an answer to that question or not—when the case of the Central Pacific Company was decided. The imputation was made that the Attorney-General, who was acting at that time, was negligent at least in the discharge of his duty in prosecuting these cases; that diligence was not shown; not a due amount of diligence. A. Do you refer to cases in which judgment had been entered?

Q. The case in which he was the attorney for the State. I didn't understand there were any specific cases mentioned. A. What cases do you refer to?

Q. There is the case of the Central Pacific Railroad Company, which was decided in the 127th; and there was a stipulation there that in the event that case was decided upon questions not involved in these three cases, that then you might reopen the judgment in these three cases, and have special findings filed, from which there might be an appeal taken.

MR. CROSS: Three other cases?

MR. DAMRON: Yes; three other cases. As a matter of fact, the Supreme Court of the United States did decide that case upon points not involved in the other three cases.

MR. JOHNSON: I will give you the record. Where is 1039?

MR. DAMRON: The stipulation which you read a moment ago, is the one to which I refer. I understand that same stipulation is contained in all of those cases. A. That was the case that was appealed.

Q. This is a case that was decided before you came into office. A. Very well; how would we know anything about that stipulation?

Q. I understand it is a part of the record of the case which was decided against the People in the case of *The People vs. The Central Pacific Railroad Company*.

MR. LEZINSKY: It is not in the *Central Pacific Railroad* case.

MR. DAMRON: Were there not two *Central Pacific Railroad* cases?

MR. LEZINSKY: No, sir; There were three *Central Pacific Railroad* cases; one for the taxes of 1883, one for 1884, and one for 1885. Now, the record is in this shape—

MR. DAMRON: You read a stipulation a moment ago; what case did that refer to? A. That is in the three cases. Mr. Marshall made a stipulation, and the stipulation was filed in those three cases; but my attention was not called to it. These cases were not entered on my docket at all. I don't recollect Mr. Marshall ever mentioning anything about any stipulation or about any tax case at all. All he said the day I took possession of the office—he handed me these six cases, or five cases which were appealed to the Supreme Court of the United States.

MR. DAMRON: There were four cases; one against the *Central Pacific Railroad Company*, the others against three other roads, the *Northern Railway Company*, the *San Pablo and Tulare Railroad Company*, and the *California Pacific Railroad Company*, in which the fact was this question could not arise. In those three cases there was a stipulation filed that in the event the *Central Pacific Railroad* case should be reversed upon any question not involved in these three cases, that then the judgment in these three cases might be reopened and a special finding had, from which an appeal could be taken? A. The records of the Supreme Court there, as found in the papers on my docket, does not show anything. My attention was not called to it.

Q. I was desirous of ascertaining why, if this stipulation did exist, why an advantage of it was not taken? A. Simply because we had no notice. Mr. Dunn said he did not know anything about it until ten days ago. My docket does not show anything of the kind. If your contention is right these cases can be reopened.

MR. DAMRON: There is a stipulation in there that if this case is decided upon points not involved in these other cases, then they can be reopened.

MR. CROSS: Here is the fact: The *Central Pacific Railroad* has a Federal franchise; it has also connecting roads. The *Central Pacific* case was decided upon the point that the Federal franchise and ferryboats were included in one unit assessment. So that if one of those cases were taken up under this stipulation, then you would have a case there free of these questions. A. Then I am to understand that you are not opposed to setting it aside?

MR. CROSS: There are three cases in which the stipulation has been brought to your attention. The proper officers can proceed to have a case made up and taken to the United States Supreme Court, in which these questions, this Federal question and these questions of assessment of franchise and assessment of ferryboats cannot arise; because the *San Pablo* and *Tulare* and the *Northern Railway* has no steamboat, and has no franchise. A. If Mr. Haymond consents to it, it will save us the trouble of making a motion.

MR. CROSS: I understood some gentleman to state that he would. A.

He proposed to eliminate from these findings—have these findings only to show that these railroads were not allowed to deduct their mortgages, and to present that single constitutional question. I say I will certainly accept that proposition.

MR. DAMRON: It is not a question as to whether the attorneys for the railroad consent or not; the stipulation is in writing and is signed by the attorneys of both sides, and you, as Attorney-General of this State, can prepare findings and submit them to the Court, and then he can appeal from that. That is the only question that I am speaking about. If Mr. Marshall went out of office after the Central Pacific Railroad case was decided, then it might not be imputed against him as being a matter of negligence because he had not had these cases reopened? A. How am I to know anything about them unless I had notice? I say it is a question for the Supreme Court of the United States; unless these judgments are not set aside by consent I propose to make a motion. If we didn't know anything about the stipulation how could we proceed?

MR. DAMRON: I am not imputing any negligence to you or your office; I am simply stating what I consider the facts.

MR. DUNN: You never had any information from Mr. Marshall at all? There was nothing on your docket? A. I don't think Mr. Marshall ever said anything to me about any business in his office that I can recollect, except to hand me five records, and I can show you the very records he handed me. Those are the five records that were handed to me by Mr. Marshall. After hunting around for some time he found them. He said: "These are cases in the Supreme Court of the United States." He seemed to regard them as important, and I took charge of these transcripts.

Q. Did he call your attention to the other cases? A. No, sir; if he had I should have made a note of it; I should have taken it down with pen, and ink, and paper, and gone to work.

Q. Did he ever call your attention to these findings, any finding of 1883-84? A. No, sir.

Q. Did he ever complain of any finding of those years? A. No, sir.

Q. Did he ever offer you any assistance to direct the findings? A. No, sir.

Q. Your attention was never called; you had no docket, no information. Here were some fifteen or sixteen cases for the two years. One year I think there were six; and your attention was never called to this stipulation at all until after I came from San Francisco? A. Yes, sir.

Q. I will say that anybody that would keep track of these stipulations and judgments would have a pretty merry chase? A. Yes, sir; and even that is quite a small feature in my office.

Q. When you spoke about appealing to the Supreme Court to advance the railroad tax cases that went up there, were you joined in that request by the attorneys for the railroad company? A. No, sir; I was not.

Q. Did they object to it? A. Mr. Wilson sent me a copy of a telegram that he said the Chief Justice of the United States Supreme Court handed to him as coming from Mr. Creed Haymond. That telegram was against the advancement. If you desire that telegram I think I can get it.

MR. DUNN: I would like to have it filed with the committee.

MR. CROSS: Wasn't it this way: That a stipulation was presented, or offered to Mr. Haymond, stipulating that the case should be advanced, and Mr. Haymond's reply was that the Supreme Court did not permit or recognize a stipulation for the advancement of a case; that the only method of advancing a case in the Supreme Court of the United States was upon motion? A. How is that, sir?

Q. Isn't this the fact: That a stipulation was submitted to Mr. Haymond to be signed by him, which stipulation was a stipulation that the case be advanced: and that Mr. Haymond declined to sign that stipulation because the Supreme Court does not recognize the right of attorneys in that Court in cases to stipulate for an advancement of the case? A. Oh, no. I think I can get the telegram that was sent by Mr. Wilson; a copy of it.

Q. Was that all that was done, simply to ask Mr. Haymond to sign a stipulation for the advancement of the cause? A. I think I have the telegram home among my papers. If you give me time I will look for it.

Q. You are familiar with the practice of that Court to that extent, that they don't recognize any stipulation for the advancement of causes? A. Of course you have got to file a written motion, but a stipulation always helps it.

Q. Do they recognize a stipulation in such a case? A. That is not this kind of a case. This is where Mr. Haymond telegraphed to the Chief Justice of the Supreme Court of the United States, and the Chief Justice handed the telegram to my associate attorney, and he took a copy of it and sent it to me. In it Mr. Haymond was opposing the advancement. It was a very different case. I recollect this: that Mr. Haymond was willing to advance one case, 1157, involving the tax of 1884. That is the case where pasters were pasted on the findings. Mr. Haymond was willing to advance that case.

MR. DUNN: That is the case where the Supreme Court of the United States went off on the point that the fences were assessed as well as the Federal franchise? A. Yes, sir; I can get the committee a copy of that telegram that I received from Mr. Wilson; I think it is at my office. Mr. Wilson was my associate there, at Washington, on behalf of the People.

MR. CROSS: That was the Washington Wilson, not the San Francisco Wilson? A. It is the Washington Wilson. In other words this is about my view of these cases, if you will just allow me for a few moments. Commencing first with the taxes for 1883; in the case of *The People vs. The Central Pacific Railroad Company*, judgment was rendered against the People, November 10, 1884; and in the case of *The People vs. The Southern Pacific Railroad Company*, judgment was rendered against the People the same day; and in the case of *The People vs. The Northern Railway Company*, judgment was rendered against the People the same day; and in the case of *The People vs. The California Pacific Railroad Company*, judgment was rendered against the People the same day. These cases were appealed to the Supreme Court of the United States on the twenty-eighth of July, 1886. The cases not appealed were *The People vs. The San Pablo and Tulare Company*, and the case of *The People vs. The Stockton and Copperopolis Railroad Company*.

MR. CROSS: Isn't there one more case right there? A. The Central Pacific case was brought by Baggett and Waymire, as attorneys, for Controller Dunn; the attorney for the defendant is J. E. Foulds; the answer is by him. Sanderson and Haymond, of counsel. On the transfer of the case to the United States Circuit Court, Mr. Marshall, the Attorney-General, signed with Waymire and Baggett the demurrer to the answer. The stipulation is signed by Foulds, Brown, and Haymond, attorneys for the defendant; and by Marshall, Baggett, and Waymire, attorneys for the plaintiff. It was stipulated in this case that the sworn statement of the Clerk of the State Board of Equalization should be conclusive upon the issue of fences and the distance across the Bay of San Francisco being included in the assessment.

The sixteenth finding says that the State Board of Equalization, in mak-

ing the assessment, pretended to assess to and against the defendant the full cash value of said railroad, roadway, roadbed, rails, and rolling stock as prescribed in said Section 3665, etc.

Finding fifteen says that said assessment included all property and kinds of property mentioned in 3665—Section 3665 of the Political Code of California, as amended March 9, 1883—except depots, stations, shops, and buildings erected upon the space covered by the right of way; which last mentioned property was assessed as provided in said section by local Assessors.

This case is 1035, or as renumbered in the Supreme Court of the United States, No. 660.

The next case is the case of *The People vs. The Southern Pacific Railroad Company*, the same persons appearing, the same attorneys. And the sixteenth finding says: "Said assessment included all property and kinds of property mentioned in Section 3665 of the Political Code of California, as amended March 9, 1883, except depots, stations, shops, and buildings erected upon the space covered by the right of way, which last mentioned property was assessed, as provided in said section, by local Assessors."

Maslin's statement, if filed, was to be conclusive on the fence question; but it was not filed.

In the Supreme Court of the United States, Mr. Edmunds remarked upon that: "Why is not that certificate filed by Mr. Maslin?" Said I: "I will file it now, if you will give me leave." I have a statement under oath from Mr. Maslin. Mr. Edmunds did not seem to be willing to grant that: but Mr. Maslin's statement, if filed, was to be conclusive. In these findings there is nothing to show, I think, that Mr. Maslin's statement was ever filed; and the Supreme Court of the United States, inasmuch as Mr. Maslin's statement was not filed, very naturally found that other finding, that all property described in Section 3665 was assessed by the State Board of Equalization. They would very naturally come to that conclusion, there being nothing to show that Mr. Maslin's statement was filed.

Finding fourteen says: This is the case of *The People vs. The Southern Pacific Railroad Company*. This case shows that said assessment included all property or kinds of property mentioned in 3665, as amended March 9, 1883, excepting depots, stations, shops, and buildings erected upon the space covered by the right of way, which last mentioned property was assessed, as provided in said section, by the local Assessors.

The nineteenth finding is that the full value of all franchises was included. That is the effect of it. This case is 1336, or 631, in the Supreme Court of the United States.

The next case is *The People vs. The Northern Railway Company*. The same attorneys appeared.

The fifth finding is to the effect that said assessment included all property and kinds of property mentioned in Section 3665 of the Political Code of California, as amended March 9, 1883, except depots, stations, shops, and buildings erected upon the space covered by the right of way, which last mentioned property was assessed as provided by said section by local Assessors.

Maslin's statement sworn to, if filed, was to be conclusive as to the fences, but it was not filed.

This case is No. 1036, or, as renumbered, it is 662, in the Supreme Court of the United States.

The next case is the case of *The People of the State of California*. The same attorneys appeared.

The fifth finding says that said assessment included all property and

kinds of property mentioned in Section 3665 of the Political Code of California, as amended March 9, 1883, except depots, stations, shops, and buildings erected upon the space covered by the right of way, which last mentioned property was assessed, as provided in said section, by local Assessors.

Maslin's statement was, if filed, to be conclusive, but it was not filed.

This case was numbered 1038, or as renumbered in the United States Supreme Court, 663.

And here I also desire to say—to ask this question: Why was not Mr. Maslin's statement also taken in the tax cases of 1884? I am talking about the tax cases of 1883. Why wasn't it provided that Mr. Maslin's statement should be made, should be given, should be filed, as to the fences and steamers in the cases of 1884?

This last case I have mentioned is the case against the California Pacific Railroad, No. 1038, and renumbered in the Supreme Court of the United States 663.

As far as the taxes for 1883 are concerned, I think under the decision of the Supreme Court of the United States, which you can all read, that the following taxes were lost because steamers were included in that general finding: In the case of *The People of the State of California vs. The California Pacific Railroad Company*; *The People of the State of California vs. The Northern Railway Company*; *The People of the State of California vs. The San Pablo and Tulare Railway Company*; *The People of the State of California vs. The Stockton and Copperopolis Railroad Company*.

The other two cases are the cases against the Central Pacific Railroad Company and against the Southern Pacific Railroad Company; and in these two cases I don't attach any blame to Mr. Marshall, Mr. Baggett, or any one else. The Supreme Court of the State of California in June, 1883, decided that steamers should not be assessed; and yet the Supreme Court of the United States says that in these cases—in these cases the findings show that they were assessed. These were filed November 10, 1884; I believe it was 1884. These findings were filed November 10, 1884. Now this decision of the Supreme Court that steamers could not be assessed by the State Board of Equalization was made in 1883. It would be very remarkable if the State Board of Equalization, if sitting as an assessing body, should proceed two or three months afterward to assess them. They sit in August; it would be very remarkable if they, sitting as an assessing body, after the decision of the Supreme Court to the contrary, should assess these steamers, when the Supreme Court of the United States had decided the preceding June that they were not assessed. Why was not this finding eliminated? Why was not this finding, which appears to figure in all these cases so conspicuously, that the State Board of Equalization assessed all the property included in these findings, why wasn't this finding eliminated? Now this was done on stipulation, and yet I understand Mr. Baggett to say no evidence was introduced.

MR. DUNN: He said he had received a letter from Mr. Maslin, in which Mr. Maslin stated that the steamers had not been assessed. A special finding was stricken out for that reason.

MR. JOHNSON: Does he say that the letter was introduced in evidence?

MR. DUNN: No, sir; he simply received that letter.

MR. CROSS: Did he make any statement what he did?

MR. DAMRON: He stated that the stipulation of the Secretary of the Board of Examiners might be taken as conclusive evidence on the point, and he said that afterwards he got a letter from him; and they thought it was not necessary, and they put in the finding anyway.

MR. LEZINSKY: He said that letter was used in lieu of an affidavit.

MR. JOHNSON: If the case had not been advanced by the Supreme Court of the United States I don't suppose we would have heard anything of them till a year from this time. Instead of discussing this matter now I don't think we would have known what the decision was till a year from this time. By getting this case advanced, of course we gained a good deal of time.

MR. CROSS: On account of the calendar being so far behind? A. Yes, sir.

MR. DAMRON: Mr. Haymond said, down there at San Francisco, that there was a case now pending before the Supreme Court of this State? A. Yes, sir.

Q. And that he was willing to insist upon an early hearing of one of these cases, or the case? Didn't he also say that he would abide by the decision of that case?

MR. DUNN: No, sir.

MR. DAMRON: That he would assist and insist upon an early hearing of the case before the Supreme Court of the United States, and would join Mr. Dunn in that regard? Could that be done and the decision obtained quicker than an appeal from one of these cases?

MR. JOHNSON: No, sir; I think not. And another thing: the issues are not made up in those cases at all.

MR. DUNN: Mr. Johnson made that statement, and I said: "Mr. Haymond, there are some cases in the Circuit Court"—I didn't know these findings you speak about in the California Pacific and Northern Railway Companies at that time—I said: "Why not take one case now in the Circuit Court of San Francisco?" and he says: "These cases are here before our own Supreme Court; why not have them decide it?" I said: "Will you be willing to abide by the decision of the Supreme Court of this State?" And he said: "No; we will appeal it to the United States Supreme Court."

MR. DAMRON: Then I am wrong. What I wanted to get at was, could it be decided quicker than it could be by taking up one of these other cases?

MR. LEZINSKY: No, sir. There is no answer in these cases, and in this other case it is all made up and the answer filed.

MR. JOHNSON: I would like to see the proposition of Mr. Haymond—what it was. It was taken down by the short-hand reporter.

MR. DUNN: Here is a communication from Mr. Haymond, and it is entirely different from the proposition as I understood what it was.

MR. CROSS: Is there any objection to the proposition of Mr. Haymond being read to the committee?

MR. LEZINSKY: I will read it. [Reading Mr. Haymond's letter to the committee.]

MR. JOHNSON: These are cases that stand on demurrer; the issues are not made up at all.

MR. CROSS: If that issue is raised, it can just as well be taken up by the Supreme Court on demurrer as it can for trial.

MR. JOHNSON: There are so many special questions involved.

MR. CROSS: There is a plain proposition here by Mr. Haymond. Take one of those cases now in the Supreme Court of the State, to have it advanced to a hearing at the very earliest date that the Attorney-General will agree to, and that when it has been so advanced, that he will stipulate to take and have it advanced to the Supreme Court of the United States, to be there heard under the ninety-day rule. Or, he says, that if the Attorney-General wants an oral argument that he will agree to have an oral argument. The Attorney-General says that the question is simply

there on demurrer, but an appeal can be taken from a case on demurrer just as well as if it was on trial. He says if that is not satisfactory he is willing to have the judgment entered set aside and the case remanded to the Supreme Court; and that he is willing now to have those cases remanded, the judgment set aside, and the Attorney-General may select a case, and that when remanded he will proceed immediately to trial on that case; and that that case can then go up on the record, if you don't want to go up on the record of demurrer.

MR. JOHNSON: I have never taken those cases out of Mr. Delmas' hands. As far as these cases in the United States Circuit Court are concerned, if you will enter into a stipulation that these judgments for 1885 shall be set aside where the judgment don't involve Federal franchises, I will agree to it. He says he is willing to go to the Supreme Court on one question. I want to put that in writing in respect to this question that he is willing to go to the Supreme Court on.

MR. DAMRON: Here is a stipulation signed by Mr. Marshall and Mr. Haymond, to the effect that these other three cases, which don't have this question attached to them, may be set aside and new findings found. It requires but one thing, and that is to go to work and prepare the findings, submit them, get a decision, and then appeal to the Supreme Court of the United States.

MR. JOHNSON: I am not saying what I shall do; I am merely discussing Mr. Haymond's proposition. I am not in the habit of rushing at important business and signing stipulations in a great hurry. I presume that I can take my time, and I shall probably move on the works of the railroad in due course or have a movement made.

MR. DUNN: In answer to Mr. Cross, it seems to me in all fairness and in all candor, that there could not be a case made up that would settle this question of a violation of the fourteenth amendment of the United States Constitution better than the one suggested by Mr. Haymond in answering my question a week ago. I submit to every member of the committee if he did not turn to Mr. Storke, and if he did not say: "Mr. Storke, you can make up a case containing nothing but that question; you can make it up according to your own wishes or you can consult with anybody else, and I will agree to sign that stipulation and go before the United States Supreme Court." And then I spoke about the case in the Supreme Court and asked the question again; I said: "If our Supreme Court should decide against you, will you go to the Supreme Court of the United States?" And he said: "Yes, we will." Why, take up these cases now?

MR. JOHNSON: Well, I will agree to it.

MR. LEZINSKY: All of this matter is in violation of that matter that I understand is before this committee; taking up State cases or anything concerning the records of them. We are dealing now entirely with the decision in the Circuit Court.

Q. Now, General, concerning these cases in the year 1884, did you have any communication with Mr. Baggett concerning a correction of the record in those cases before you took the appeal in those cases? A. Yes, sir. I heard something about this mutilated record, and as a matter of course I knew the only way to find out anything about it would be to go to the attorney for the People, to the attorneys who were representing the People at that time. I didn't know where else to go, as I was not an officer at that time, so I wrote to Mr. Baggett that I would like for him to get up some affidavits; I would like to have his own and General Marshall's, and affidavits on that subject as to these pasters. I think he wrote back to me

that he would assist in the matter. Mr. Baggett never to my recollection spoke to me about the matter first. I spoke to him for the purpose of employing him, expecting to pay him for his services; and I believe I did pay him for the services he rendered. So he said he wrote to Mr. Marshall, but I never heard that he got any answer. But in a conversation that I had with Mr. Baggett he stated that Judge Sawyer had said that he would go into Court and swear that those pasters were on those findings when he signed them. "Well," says I, "Mr. Baggett, if Judge Sawyer will swear to that there is no use of doing anything further about it, because this case is to be settled by Judge Sawyer. The Supreme Court of the United States is not to settle that. If Judge Sawyer will swear to that that ends the matter." So the Judge has come in and sworn that those pasters were on them when he signed the findings; and I was not surprised at all when he so swore, because in this conversation with Mr. Baggett I understood him to say so. So I took it as a fixed fact that those pasters were on at the time the findings were signed. Well, now, take the case of the Central Pacific Railroad Company, there are findings, three findings which were fatal to that case, No. 1157. One was the Federal franchise being assessed, that was fatal; another is that all the property was assessed, that would be fatal; another is that fences were assessed, that was fatal. There were three fatal things, either one would have been sufficient to defeat that case. These other cases could not involve anything else except those three findings. Therefore the decision in that case would settle the decisions of the other cases. So if you look over the tax cases of 1884, I think—that is my recollection, I won't speak positively—I think that you will find in all of those cases that general sweeping provision that the assessment by the State Board of Equalization included all property and kinds of property mentioned in Section 3665, as amended March 9, 1883; excepting depots, stations, buildings, and so forth. Of course that would include steamers, and so that kind of stipulation as a matter of course upon which the findings of those particular cases that I speak of were heard—I say that kind of a stipulation would defeat the recovery of those taxes of 1884 in all that kind of cases. That is my view as a lawyer. Of course I did the best I could under the circumstances in arguing to the Court to get away from this proposition. I saw its pertinence and I did the best I could. And, bye the bye, I will furnish the committee with a copy of my brief and argument. Mr. Haymond, on the other side, contended that that did include steamers. I will give the committee here a brief of my associate, and here is an oral argument of my own. Now as to the position that Mr. Haymond took. The finding in 1157 is that fences were included. He says here—this is his argument:

"The averment of the answer in case No. 660, is as follows: On the eighteenth day of August, 1883, the State Board of Equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by Section 10, of Article XIII, of the Constitution of the State of California, did make a pretended assessment, for the purpose of taxation, for the fiscal year of said State then next ensuing, upon the franchise, roadway, roadbed, rails, and rolling stock of said railroad against defendant.

"Said pretended assessment was not made separately upon the franchise, roadway, roadbed, rails, and rolling stock, or any properties of said railroad, but all of said property was blended together in making said assessment, which assessment was then and there so entered upon the minutes of said Board. Said assessment is the assessment upon which the several taxes mentioned in the complaint herein are based, and no other assess-

ment than the aforesaid was ever made of said property, or any part thereof, for said fiscal year.

“Said assessment included all property and kinds of property mentioned in Section 3665 of the Political Code of California, as amended March 9, 1883, except depots, stations, shops, and buildings erected upon the space covered by the right of way, which last mentioned property was assessed, as provided in said section, by local Assessors.”

The findings in No. 660 are (page 39, folio 100) that the State Board of Equalization, under the authority of Section 10, Article XIII. of the State Constitution of California, and in the mode and manner prescribed by Section 3665 of the Political Code, made the assessment, and so forth.

A further finding in No. 660 (page 51, folios 138 and 139) is in the language of the averment of the answer above quoted.

The averments and findings in Nos. 661, 662, and 663 are the same. The averment in 664 is the same, and the finding is the same as the findings in No. 660, with this addition, “and except steamboats.” The finding in 1157 (page 4, folio 51) is that the value of fences was included. This finding disposes of that case.

The section in question provides that the Board must assess the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county; that the assessment must be made to the corporation, person, or association of persons owning the same, and must be made upon the entire railway within the State, and must include the right of way, bridges, culverts, wharves, and moles upon which the track is laid, and all steamers which are engaged in transporting passengers, freights, and passenger and freight cars across waters which divide the road. The depots, stations, shops, and buildings erected upon the space covered by the right of way are assessed by the Assessor of the county wherein they are situated.

We have now seen that the assessment in this case did include all of the property mentioned in this section, except depots, stations, shops, and buildings erected upon the space covered by the right of way and except steamboats.

It therefore included the entire railway within the State, and it included wharves and moles upon which the track is laid. The theory of the State Board of Equalization seems always to have been that it had jurisdiction over all railroad property, except depots, shops, stations, and buildings erected upon the space covered by the right of way. Mr. Delmas, who had virtually been the adviser of the State Board of Equalization for many years, said in his argument in the Santa Clara case (118 U. S., page 397):

“Fences built upon the line of the roadway are a part of the roadway as necessary to its protection, as much so as the railing of a bridge is part of a bridge, or the frame work of a tunnel is a part of the tunnel. Such has always been the understanding of the law in California, and the fences have always been assessed by the Board of Equalization.

“I have never been able to grasp the proposition that the fences are no part of the railroad which they inclose. If the defendant made a conveyance of its railroad from San Francisco to San José, would not the fences pass by the deed? Clearly as much so as a sale of my garden would convey the fence which incloses the garden.

“It is true that the steamers Transit and Thoroughfare with iron tracks laid upon their decks and used for transporting freight cars across the Bay of San Francisco from the rails on the east to the rails on the west side of the bay, are part of the Central Pacific Railroad. It is true that fences, if they do not belong to coterminous owners, are part of the railroad. It

is also true that depots, stations, shops, and buildings erected upon the space covered by the right of way, are part of the railroad.

"All these things would pass by grant of the railroad; but the framers of the Constitution, for the purposes of taxation, separated railroad property, and gave to the State Board jurisdiction over the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county, and this jurisdiction was given by enumerating the things themselves.

"All other property belonging to the railroad company, whether part of its railroad or not, was left within the jurisdiction of the local authorities. It was this division of railroad property, and the vesting of jurisdiction in two tribunals to tax it, which made the tax so onerous.

"The State Board of Equalization, acting in conformity with the advice and belief of Mr. Delmas, included in its assessments everything except depots, stations, shops, and buildings erected upon the right of way. Local Assessors assessed in their respective counties all those parts of the railroad which were not included within the constitutional jurisdiction of the State Board of Equalization.

"After this decision the State Board excepted, as appears from the findings in this case, steamers, but still included the wharves and moles, which were the subjects of assessments by the local Assessors under the general laws.

"There is no doubt but under the decision of this Court and of the highest Court of California, that Section 3665 is unconstitutional, and that an assessment made in accordance with its provisions must be null and void.

"The Board in this case, according to the findings, assessed the franchise, the roadbed, the roadway, rails, and rolling stock. When it had assessed that property its power was exhausted; but it proceeded further and assessed the wharves and moles, and blended their valuations with the valuations which they had fixed upon other property.

"A wharf is defined by Webster to be a perpendicular bank or mound of timber or stone and earth, raised on the shore of a harbor, river, canal, or lake, or extending some distance into the water, for the convenience of lading or unlading ships or other vessels.

"A mole is defined by Webster as a mound or massive work formed of large stones laid in the sea, extended in a right line or an arc of a circle before a port, which it serves to defend from the violence of the waves, thus protecting ships in a harbor.

"Now, it is true that a railroad may be, and frequently in these days is, laid upon a mole, or for the convenience of lading and unlading ships, is laid upon a wharf. The rails, the roadbeds, and the roadway, notwithstanding the fact that they are laid upon moles or wharves, might be the subject of assessment by the State Board of Equalization, but these things are assessed when the assessment is made upon the roadbed, roadway, and rails.

"When the State Board of Equalization assessed the enumerated property, it had reached the end of its jurisdiction, and performed all the functions which the law conferred upon it. Wharves and moles, as such, though belonging to a railroad company, are subject to assessment by the local Assessors alone. The State Board of Equalization has no more jurisdiction, because they belong to a railroad company and are used in connection with the road, than it has over the shops, depots, and steamers, used as part of a road, or the fences built alongside of it.

"The vice of this assessment, and of every one made, rests upon the assumption of Mr. Delmas, followed by the State Board of Equalization, that because

a thing would pass by grant as part of a railroad, it was subject to the jurisdiction of the Board. So tenacious has the Board been upon that subject, that, notwithstanding the decision of the Supreme Court of the State of California that steamers, though part and parcel of the railroad, were not the subject of assessment at their hands; notwithstanding this Court has decided that though fences may be part of a railroad, yet they are not subject to the jurisdiction of the Board, the Board has yielded only to the letter of these decisions, and has wantonly violated their spirit and disregarded the principle upon which they are founded.

"The principle of the Thoroughfare and Transit case, decided by the Supreme Court of California, controls here, and would be binding upon this Court, even though this Court were of a different opinion. No such difference, however, exists. Both tribunals are in harmony, and it would seem that the case at the bar and the other cases argued with it, are to end whenever the record is looked into.

"To these propositions counsel for the State make but two answers. First, they say that in these cases there is a general finding that the State Board assessed the franchise and roadbed, roadway, rails, and rolling stock, and that this general finding cannot be overcome by special findings which say that the Board included in that assessment all of the property included in Section 3665 of the Political Code.

"But when we turn to Section 3665 of the Political Code, we find the language to be entirely in accord with these findings. That section declares that the Board must assess the franchise, roadbed, roadway, rails, and rolling stock of all railroads operated in more than one county; that the assessment must be made to the corporation, person, or association of persons owning the same, and must be made upon the entire railway within the State, and must include the right of way, bridges, culverts, wharves, and moles upon which the track is laid, and all steamers which are engaged in transporting passengers, freights, and passenger and freight cars across waters which divide the road.

"As I have said, it would be seen that the assessment, in accordance with this statute, was made, as the findings say, upon the franchise, roadway, roadbed, rails, and rolling stock; but the State Board, following the directions of this statute, included in the valuations of the franchise, roadway, roadbed, rails, and rolling stock, as directed by the statute, the value of property over which it had no jurisdiction, and which, under the Constitution and laws of the State, was to be assessed and was assessed by local Assessors.

"This statute is clearly unconstitutional, and an assessment made in manner and form as directed by it is unconstitutional, because it includes within the valuation of the franchise, roadway, roadbed, rails, and rolling stock, the value of property which has already been assessed by the local Assessors."

MR. DAMRON: Mr. Chairman, I would like to ask if the evidence has been concluded in the matter? As far as I am individually concerned, I think I can read Creed Haymond's argument at some future time.

MR. CROSS: General Johnson, did you ever ask Attorney-General Marshall to give you any information, which he refused to give? A. I don't think I ever had a half an hour's conversation with him in my life.

Q. Wasn't it, as a matter of courtesy, more your place to ask for information as to what had transpired while he was in office, than it was for him to volunteer it? A. No, I think not. The first time I came to Sacramento to take possession of this office—when I came here I found the office locked up and nobody in, and no porter. I could find no porter with

the key. I stayed here one day and went down to the city on the ten o'clock train. I could not get into the office at all. It was my office; I was entitled to the office, but I could not get into it. Then I went to San Francisco, and of course as soon as I got into the office there was business for me to attend to. I think the first thing I did was to appear in some matter in Judge Maguire's Court. And when General Marshall came in, I don't think he introduced me to the Court as his successor at all. I was not going to ask him to do it. But I assumed the prerogatives of the office at once. I went to the office there at San Francisco, and I believe I found that office open. Mr. Marshall took a cigar—I think we both smoked—and I think he spoke about removing some pictures, that he would remove after awhile. I think there was a picture there of Gladstone, a very good one, too; he said after awhile he would remove it; and there were some other pictures. I told him that was all right, if my recollection serves me right. He spoke about some street case, where he made certain appointments. I told him it would not be my rule when my predecessors had made appointments, to remove anybody except for cause; that I didn't know of any cause for removing any of his appointees in street cases. Then he gave me the five records that I spoke of. I think that was all that was said that I can recollect about taxes or tax cases.

Q. Isn't it the custom that has been in vogue always, where one case is substituted for another, for the substituted attorney to ask for the information he may want? A. No; the way I look at that is this: There was nothing compelling Mr. Marshall to assume control of these tax cases. The law says the Controller shall appoint an attorney; the attorney did. But Mr. Marshall went into Court, and by virtue of the law that the Attorney-General has superintendence of the State business, the conduct of these cases was awarded to him. Just as soon as that was done it was his duty to put those cases on his docket for the acquaintance of the public and his successor; and whenever he made a stipulation, put that stipulation on; whenever there was a judgment to note the judgment was rendered; that would acquaint his successor with the status of the whole cases. The idea of keeping a record or docket in one of our public offices is for the benefit of his successors, so that they can look at his docket and see just exactly what cases he has to attend to.

Q. His docket was improperly kept? A. Yes, sir. There was such a mass of details that it would require a man a great while to master them.

Q. The difficulty to get up the Federal question, as I understand you, is this: that the United States Supreme Court will not decide a constitutional question, as we speak of it, if there are other questions which necessarily decide the case? A. Yes, sir.

MR. DAMRON: I think that is the history of all Supreme Courts.

MR. CROSS: They avoid difficulties whenever they can. So that you can not really accomplish anything with regard to determining the efficiency of our present method except by having the case stripped of everything except the question of conflict between our State Legislature and the fourteenth amendment of the United States Constitution. If we can get a case like that before the Supreme Court, then we can have the question decided as to whether our assessment is right or not? A. There is no trouble in getting any stipulation from me. I move for an advancement too. I am inclined to think that you have to make a motion to advance any case.

Q. In the United States Supreme Court a case can be submitted on briefs? A. We can get the case advanced: they advanced the other case for the same reason and I think they will advance this.

Q. If you desire another argument you will have to wait, but without it

you could have your case advanced in ninety days. A. My associate has probably as much experience in the Supreme Court of the United States as any man there in Washington, and, perhaps, has the reputation. He regarded our procedure as the proper procedure.

Q. There is a simple rule directly on the matter of argument. A. That may be.

MR. DUNN: We don't want to take up any more time. We simply desire to file a statement, if the committee will allow us that privilege. Mr. Lezinsky will prepare it.

MR. CROSS: About Wednesday evening, we would like to have about half an hour to introduce a little more complete evidence, and a detailed statement showing the amount of taxes assessed. We propose to show before this committee, by the reports of the Controller and by mortgages on record in this State, that if the mortgages had been deducted from the properties, the real estate of the railroad, just as those against other real estate are deducted, that then the Southern and Central Pacific Railroad Companies have paid \$1,000,000 more than they could be required to pay if they had been assessed just as other owners are assessed.

[Adjourned to Wednesday evening.]

MONDAY, March 4, 1889—Eight o'clock P. M.

MR. CROSS: I understand that Mr. Gildea desires to correct one item of his testimony previously given. Certainly, if that is his desire we have no objection.

MR. GILDEA: In connection with the testimony given, I examined it, and in an answer to a question by Mr. Cross as to whether the earnings of the ferries were taken into consideration by the Board of Equalization in making the assessment, I find that I made the answer that I assumed so. And in further pursuing that testimony I go on and state that I didn't see how it could be taken separately, and the question is asked and directly answered as to whether the earnings of the ferries were taken into consideration, and I still said "I think so," "I am quite certain of that." I thought at that time that the earnings of the ferries—that the ferries were a part of the Central Pacific Railroad. Each road or corporation running in two or more counties of the State are required to make a sworn statement of the total earnings, their total expenditures, their running expenses, and that shows their net earnings. I assumed that the ferries were a part of the road. I have since learned from what I deemed pretty good authority that the ferries are a private corporation; if this be true, and the ferries are not a part of the Central Pacific Railroad, then the answer was wrong. They were not taken into consideration in any manner by the Board. Nothing was taken into consideration by the Board except the sworn statement of the earnings of the road itself. And if the ferry earnings are not a part of the road, then it could not be taken into consideration by the Board at all. Of course if the ferry earnings are a part of the road, why, then, there was a mistake made; I am mistaken.

MR. CROSS: You understand that it was a requirement of the law that it was the earnings of the road or of the company? A. Each corporation is required to report to the Board their total earnings, the general condi-

tion of the road, the number of cars, the number of engines; and goes on to state precisely what they have got; their stocks, their bonds, and all that kind of thing; their gross earnings, their expenses.

MR. SEAWELL: Is that the way you ascertained the value of the franchise?

A. The way that I ascertained the value of the franchise is the difference between what the property is worth—that is, what the roadway, the roadbed, rails, and rolling stock, and the various other things—and what the business, what the company's earnings on the road, on the property, are.

Q. That is the way that you ascertained the value of the franchise? A. Yes, sir; for instance, you take a roadway a hundred miles long and not earning a dollar; they have steel rails and the same kind of service, but they have not the business. The road is not worth as much as a road in the same condition, with the same kind of service, that has a large business, and earning and in all probability is going to continue to earn for the next ten, fifteen, or twenty years, and increase its present dividend.

Q. Well, in ascertaining the value of the franchise of the Central Pacific Railroad, did you take the earnings and then deduct the tangible property from the earnings and assess the balance as the franchise? A. The franchise was not assessed by the Board of which I was a member, separately, during the term for which I was a member.

Q. It was not assessed separately? A. No, sir.

Q. Was it assessed at all? A. It was included in the general value of the road—the general property of the road. The roadway, roadbed, rails, rolling stock, and franchise were assessed, as for instance, the Central Pacific road, or the Southern Pacific road, or the Northern Railway, or the California Pacific—it simply was assessed as a road. There was no separate assessment. We did that in obedience to the instructions of the Attorney-General, who is the constitutional law officer of all the State officers, and required to give advice to us.

Q. You did, as a matter of fact, meet and assess then the line across the bay, didn't you? A. Which?

Q. Assess the boats across the bay; were they assessed in with the railroad? A. Not during our term; the boats were not assessed at any time.

Q. If you take the gross earnings, was that included in those earnings, to ascertain what the value of the franchise was? A. I just corrected my statement upon that point. The ferries, as I have been informed, are not included as a portion of the earnings.

MR. DIBBLE: How can they segregate the earnings of the ferries?

MR. CROSS: It is all one corporation, and operated as one corporation. You must have been misinformed, Mr. Gildea.

MR. DIBBLE: How in the world can they segregate the amount that would go to the ferries' company when they sell a ticket from San Francisco to Omaha? A. There is a large business of the ferries, Judge.

Q. Of course there is a large business of the ferries; and part and parcel of it is local, but there is a great deal that is not local? A. A portion is local, and that portion is included. Mr. Cross states that the ferries belong to the Central and Southern Pacific Companies.

MR. CROSS: The tickets they sell not only carry a man across the bay, across the ferry; but clear up into Oakland, or clear out into Fruitvale. A. I understand that; but it is not a portion of any particular road.

Q. They are used in connection with all roads? A. Yes, sir; and their earnings are not returned in the earnings of the Central Pacific or Southern Pacific, or any of the roads assessed by the Board.

Q. Who gave you that information? A. The Secretary of the Board.

Q. He is a very careful man? A. He is a very careful man, and I think he has it from experience which is reliable about that.

Q. Their official reports will show? A. Yes, sir; there is no question about that.

Q. You want to be correct about that? A. Yes, sir; I want to get my testimony right upon that point, and upon that matter alone.

MR. CROSS: I am indeed sorry that more members of the committee are not present, and I consider it rather strange, when so important a thing is before the committee, that the attorneys representing the other side, the Controller and the Attorney-General, do not even grace the committee room with their presence.

Now, I stated that on this evening I wished to introduce a little testimony, which would take but a brief time. I have had the matter put in the form of affidavits, which I can read in a few minutes, and which are directly to the point, and the affidavits I can make public records, such as any person can see, so that there is no danger and can be no question but that they are accurately correct.

The first is the affidavit of C. L. Lansing, who being duly sworn, deposes and says: "I am the Secretary of the Southern Pacific Company, and as such am custodian of the books and vouchers of said company aforesaid. That as said Secretary I have the means of knowing the amount of taxes paid by said company on railroad lines leased and operated by it from the year 1866 to 1888 inclusive."

There are two affidavits on this, one being made by Mr. Lansing, who had charge of this matter for the last three years, and the other by another party. "I further aver and declare, as deponent herein, that said Southern Pacific Company has paid for State and county taxes in the State of California during said time, the sum of \$500,000 more than it should have paid, had the property on which taxes were so paid been assessed and taxed like the property of individuals, where deductions are made on account of mortgages. G. L. Lansing. And subscribed and sworn to."

Here is another affidavit: "J. L. Willcutt, being duly sworn, deposes and says: I am Secretary of the Southern Pacific Railroad Company, and as such am custodian of the books and vouchers of said company aforesaid. That as such Secretary I have means of knowing the bonded indebtedness of said company, and through said vouchers have the means of knowing the amount of taxes paid by said company from 1880 to 1888; the average bonded indebtedness in the State of California has been during that time not less than the sum of \$31,790,000. I further aver and declare as deponent herein that said Southern Pacific Railroad has paid for State and county taxes in the State of California during said time the sum of \$750,000 more than it should have paid had the property of said company been assessed and taxed like the property of individuals, where deductions are made on account of mortgages. J. L. Willcutt. And subscribed and duly sworn to."

And here is another affidavit of E. H. Miller, Jr.: "E. H. Miller, Jr., being first duly sworn, deposes and says: I am the Secretary of the Central Pacific Railroad Company. I know the bonded indebtedness of said company, and through said vouchers have the means of knowing the amount of taxes paid by said company from the year 1880 to 1888. The average bonded indebtedness in the State of California has been during that time not less than the sum of \$26,000,000. I further aver and declare as deponent herein, that the said Central Pacific Railroad Company has paid for taxes in the State of California during said time, the sum of \$350,000 more than it should have paid, had the property of said company been assessed

and taxed like the property of individuals, where deductions are made on account of mortgages. E. H. Miller, Jr., and verified before a Notary Public."

I will read one more affidavit, and that will close the evidence so far as I am concerned; and in this matter I am appearing for Mr. Haymond, who is the counselor of said company: "State of California, City and County of San Francisco, ss.—I, Creed Haymond, being first duly sworn, depose and say: That about the month of September, 1887, the Honorable Stephen M. White (now Lieutenant-Governor) came to me and represented that the Attorney-General desired him (White) to see me, and to state that the Attorney-General was anxious to have the question whether the Constitution of California, relating to the taxation of the property of railroad and other quasi public corporations, was in violation of the fourteenth amendment to the Constitution, determined by the Supreme Court of the United States, and wished to know whether I would sign a stipulation that the cases might be advanced for argument upon the calendar of the Supreme Court. I stated to Mr. White, that a stipulation to that effect would amount to nothing; that the Supreme Court would only advance the case upon statement of facts, showing that it was such a case as should be advanced, and not upon the mere stipulation of attorneys; or, in other words, that the Supreme Court of the United States would not permit the attorneys to arrange its calendar. I had just received, and had upon my table, the records upon the writs of error in the cases which the attorney desired to be advanced. I turned to the record, and showed Mr. White that under the decision of the Supreme Court of the United States, already made, the question which the Attorney-General desired to have decided, would not, in all probability, be determined by the Court; that the cases would probably pass off on the questions of the taxation of the Federal franchise, or other informalities in the case. Mr. White, after examining the record, agreed with me upon this subject. I told him that I would be pleased to see the Attorney-General, and talk with him upon the subject. Subsequently, the Attorney-General called, and I went over the same matters with him. He either presented to me a written statement, or stated orally that he would make a motion to advance the cases, upon the ground that such a question was involved, and that the cases would turn upon it, and asked me to concur with him in that statement. I told him that I could not join in such a representation to the Supreme Court of the United States, because these were writs of error from the Circuit Court, and that the Supreme Court of the United States would have jurisdiction over the whole case, and could decide any question that the record raised, and had already determined that it would not decide a constitutional question, if there was any other point upon which the case could be determined. Had I joined with the Attorney-General in the representation, as requested, I believed, from my standpoint, that I would have been imposing upon the Court.

"I also stated to the Attorney-General that there were five cases pending in the Supreme Court of the State of California; that I would stipulate to take them up with him at any time the Court might determine, and bring them to a hearing. I said to him that these cases could be decided and taken up to the Supreme Court of the United States on writs of error, but that a case going to the Supreme Court of the United States from a State Court upon writ of error would only give the Court jurisdiction over Federal questions, and that it would not look into minor questions, such as whether fences had been assessed or not. I told him that we could probably get such cases before the Supreme Court of the United States as soon as the

other cases, and get a decision on the Federal questions. He declined to join with me in such a stipulation, and advised me that he would apply, as he had the right to do, to advance the other cases. Having notice that the application would be made, I sent to the Clerk of the Supreme Court of the United States a telegram, of which the following is a copy:

“San Francisco, October 7, 1887. Clerk United States Supreme Court, Washington, D. C.: The Attorney-General of California advises me that he will move the Supreme Court of the United States to advance the railroad tax cases now upon its calendar. Five tax cases were tried in the Superior Court of San Francisco about the beginning of this year, and in each case judgment was rendered in favor of defendant, upon the ground that the statute of California, under which railroad taxes were assessed, was in violation of the State Constitution, and therefore void. These cases have been appealed to the Supreme Court of California, and will be heard at the January term of that Court. If the judgment of the lower Court is affirmed, it will finally dispose of all the tax cases pending in the Supreme Court of the United States. I suggested to the Attorney-General to state this fact in his petition to advance the cases, believing that the Supreme Court of the United States would not wish to pass upon that question when it was pending and about to be heard and determined by the highest Court of this State, it being a question as to the construction of the State Constitution, the determination of which, by the State Court, would be followed by the Supreme Court of the United States. The Attorney-General has said that he will not state this proposition to the Court in his petition to advance the cases, but has agreed that I may state the fact to the Court.

“The Attorney-General will be in Washington, and no doubt will agree that this statement is correct. Please be kind enough to submit this telegram to the Chief Justice, in order that the attention of the Court may be called to the fact. If, notwithstanding this, the cases are advanced, I would like to have them heard at the earliest moment possible.”

“I made the statement that the cases would be heard at the January term of the Supreme Court of California, because I then believed that upon my motion, and owing to the importance of the questions involved, the Supreme Court of California would advance them upon the calendar. I was disappointed in this, for the Attorney-General appeared in opposition to the motion and prevailed against me; hence, the cases have not been heard up to this date.

“During my statement before the Assembly Judiciary Committee a difference of opinion arose as to whether I had made a stipulation with the Attorney-General, Mr. Marshall, that the other cases, involving the taxes for the years 1880, 1881, and 1882, should abide the decisions in the San Bernardino case. Mr. Dunn thought that there was no stipulation. I knew, at the time, that there had been such an agreement, but whether it had ever been reduced to writing or not I did not know. I find in my letter book a press copy of such a stipulation, as follows:

“In the Circuit Court of the United States, District of California. County of San Bernardino vs. Southern Pacific Railroad Company. No. 2829. It is hereby stipulated and agreed by and between the parties to the above entitled action, and to the actions hereinafter referred to by number, and all recently determined by the Circuit Court of the United States, that the first mentioned actions shall abide by and be governed by the final determination of the Supreme Court of the United States in the above entitled action; and it is further stipulated that neither party will treat any of the judgments entered in said cases as consent judgments; that if necessary

to avoid such treatment by the Supreme Court of the United States, the judgment in favor of the plaintiff in each of said actions may, on motion of the plaintiff, be set aside, and judgments in each of the said cases in that event shall be entered *nunc pro tunc* of the date of the present judgments in favor of the defendants, according to the original decision of the Court, and to have the same force and effect in all respects as if such judgments had been so entered at said time. The cases referred to and which are to abide the final decision aforesaid, are numbered on the calendar of the United States Circuit Court as follows: 2755, 3993, 2781, 2778, 3060, 3061, 2786, 2788, 3108, 2798, 2797, 3063, 2803, 3071, 2820, 2819, 2825, 2914, 2773, 2840, 2841, 3062, 2756, 3094, 2767, 2829, 3064, 2789, 2787, 3109, 2809, 2840, 2835, 2839, 3096, 3065, 3102, 3101, 3077, 2817, 2818, 2837, 3095, 3059, 2677, 2780, 3069, 3109, 3104, 3083, 2826, 2913, 2782, 2779, 3072, 3068, 2759, 3097, 2838, 3219, 3218, 2811. Dated March —, 1884. Creed Haymond, counsel for defendants, for all attorneys for defendants. E. C. Marshall, Attorney-General, State of California.

“The case intended to be referred to stands on the calendar as 2757, instead of 2829, and the latter number was entered by mistake. This stipulation is amended according to the original intention of inserting said number 2757. Creed Haymond, counsel for defendants. E. C. Marshall, Attorney-General for State of California.”

“No actions, to my knowledge, have been brought by the State of California to collect the taxes for the year 1887 upon the assessment by the State Board of Equalization. On the roll the Northern Railway, the San Pablo and Tulare, and the California Pacific Companies appear delinquent, and none of these cases involve the question of Federal franchise. If a suit is brought upon either or all of said cases, I will appear at once, and agree that the cases shall be tried at the earliest moment possible, and afford the State an opportunity to try in either of the cases the issue whether fences were or were not included in the assessment by the State Board of Equalization for the year 1887. I am willing to stipulate that said cases, if brought, shall not only be tried as speedily as possible, but after determinations by the Superior Court or Circuit Court, as the case may be, that the record may be prepared, and the cases hurried forward to the appellate Court for final determination with all possible speed. Creed Haymond. Subscribed and sworn to before me this twenty-eighth day of February, 1889. E. B. Ryan, Notary Public.”

I wish these affidavits to be filed by the committee and appear as a part of the evidence in the case.

Now, Mr. Chairman, unsatisfactory as you have already realized that it must be for me to argue this matter—this case—before so few of the committee, I still believe that wherever anything is right and once gets started, that it will roll until it reaches everybody that is interested.

Now, I will be very brief, because I know how much work there is for the Assembly to do, and how important a part the members of this committee perform. If any person, natural or artificial, believes himself unjustly dealt with in the matter of taxation, he has a right to go to the Courts and have the question of whether he has been properly assessed and taxed determined. If there is any one that has not that right, then he is denied the privileges of this government, which are accorded to everybody else.

When the Courts have decided that matter, we must either say that the Courts are right, or we must assume that we are better prepared to determine the matter at issue than are the Courts, which we have established for the purpose of determining that question.

Now, the great contention of these railroad companies as I understand them, from the very first of the trouble about these troublesome questions, has been that they had a right to be assessed upon the same basis as other people. That the same ratio upon which other people paid taxes was the ratio upon which they had a right to pay taxes also.

And that because the Constitution of the State provides that all people who own real estate in the State of California, when it comes to assessment time, may deduct the value of any mortgages upon the property, and be assessed only for the value of the balance of the property, and that because that right is denied to the owners of railroad properties, therefore that railroad properties are not assessed upon the same basis as are other people. Now, then, if they have such a contention, I do not care to argue to any man who will not immediately admit that if there are mortgages upon their properties, that they are not assessed upon the same ratio or basis as are other people. I have no time to waste upon a man who does not understand that and acknowledge that as a proper statement of the case.

Now, two members of the committee have come in since I read the evidence which I proposed to furnish here to-night. That evidence shows in the plainest, and clearest, and undoubtable terms, that the Central and Southern Pacific Railroad Companies in the State of California, have, since the adoption of the new Constitution, paid such an amount of taxes as that if their mortgages had been deducted, the same as other people's mortgages have been during all that time, from the assessed valuation of their property, they have paid more than \$1,500,000 in excess of their share of taxes.

Now, I don't wish to characterize anybody improperly, but if that is a fact, and the evidence is here and uncontradicted, and every fact recited appears in the public records, because their mortgages are spread upon the records, and the amount for which they are assessed is spread upon the records, and the amount of taxes which they have paid is spread upon the records; and, I take it for granted, that if this is right for other land and real estate owners to have their mortgages deducted, then it is right for the railroad companies to have their mortgages deducted.

Now, what man knowing these facts—a man may not know these facts and form his opinion from that without them, but if he knows the facts and then makes up his opinion, his judgment corrected by knowledge, for judgment without knowledge of the facts never can be correct—what man, having these facts before him, can sit down as a legislator of the State of California, and, in good faith, say, "I will give my vote and my influence, after these people have paid \$1,750,000 more than their share of taxes, I will give my voice and vote to levy a further tax upon them for that very same period in which they have paid such excess."

Now, I have something more to say. A tax which is not lawfully assessed and levied is in law no valid tax, and being no valid tax, never can be delinquent as a tax. There may be something spread upon the record which looks like an assessment and looks like a levy, but if it is not a valid act, then there can be no delinquency on those cases.

So that when the Controller of the State sends to the Assembly a report showing a certain amount of delinquency of tax due from these people, the Court has said they were due, and there has not been a suit brought since the new Constitution was adopted in any Court but that has been decided in favor of the defendants. Take the Court of Judge Levy, and Judge Levy was appointed a Judge by Governor Stoneman especially because he was known to be a man whose feelings were against the Central and Southern Pacific Railroad Companies. That was the main factor which

entered into his appointment, and, yet, even he, when these methods of assessment and taxation were brought before him, had to decide that the methods were illegal and the assessment invalid. Every case which has gone to the Courts under these methods of attempting to proceed, in every case it has been decided that the methods are illegal and invalid methods. And how can a man, against the Superior Courts of the State, against the Supreme Court of the State, against the Circuit Court of the United States, against the United States Supreme Court, when they have all decided one way without a break in the whole line of decisions—what are you or I doing, standing up against all those Courts and saying that the Courts are mistaken.

Now, if the methods pursued are illegal and are invalid, what is there in a bill which simply provides that you will go at it and do the very same thing over by the very same methods? What can result from it? Only one thing can result, and that is another string of law suits to cost the State and the railroad companies a large sum of money, without anybody deriving any advantage or benefit from it.

Now, the evidence in these cases will show, and show beyond dispute, that the railroad company has been contending upon this line all the time.

Now, I want to call your attention to another thing. There has been for a long time in my party, the Democratic party, a disposition to cast censure upon the late Attorney-General Marshall; he has been publicly denounced; he has been privately denounced. A large portion of this investigation has been directed to the proposition of showing that Attorney-General Marshall signed some stipulations which he ought not to have signed; that these stipulations contained certain matters which they ought not to have contained.

Now, I take it that there is not a member of this committee who has not had some experience in tax cases. What is necessary in order to make a valid assessment of taxes, so that the man is bound to pay the taxes? You can't assess and levy taxes outside of the law. You must proceed in compliance with the law. What is the great fault that is found with Attorney-General Marshall and with Judge Sawyer as to the findings which were signed as the result of the stipulation signed by Mr. Marshall. It is this: That in the findings in those cases, was a finding that the Board of Equalization had assessed the properties named, and in accordance with the provisions of Section 3665 of the Political Code. Now, the Board of Equalization had no guide but that law. They had to go by that law; they were sworn to obey the law. If they did not obey the law, they were not acting within the law, and that is the law as laid down for them by the Legislature, in what I will denominate as the "Fileher bill." A bill which was approved and praised by the Controller of the State, and adopted largely at his suggestion. There were two things to do. Either the Court had to find that the Board of Equalization had complied with the provisions of that law in making the assessment, or it had to find that they did not comply with the provisions of that law as to how the assessments should be made. If the Court had found that they did not comply with the provisions of that law, then the assessment would have been void, because they didn't comply with the law. Is there any lawyer that does not know that? If the Court found that they did comply with the provisions of the law, then the question was not whether the Board of Equalization had done its duty and complied with the law, but whether the law which the Legislature had laid down for them to act by was a valid law. Now the finding which these gentlemen make so much fuss about, was that the State Board of Equalization had done just what that section of

the Code required them to do: because the finding was made—because Judge Sawyer found it. If the Court had found that they did not comply with that section of the law, then there could not have been any tax, because the tax had not been levied according to law. So where would they have been if Attorney-General Marshall had not put that finding in there? They would have been levying an assessment and tax without authority of law at all. And yet these men find fault because this finding is in there, which was absolutely necessary to sustain the tax under any circumstances. If Judge Sawyer found, that in levying the assessment, that they had not complied with that section, he would have declared the tax invalid on account of that. There was the evidence before them that they had complied with the law, and so he found, and he had to so find. Now they blame Attorney-General Marshall for that. Now, to lawyers, I would say this—another man might not readily understand it—the Controller not being a lawyer might not understand it—when a great case is completed, and the lawyer who has conducted it, and won or lost it, looks back at the case, he is sure to see some place where he might have done better. So when Attorney-General Marshall did this work on behalf of the State, assisted by Judge Waymire, and Judge Baggett, and Mr. Delmas, when they have done their very best, and get through, and come to look back at it, they saw that there were vices, but the vices were not the vices of the Board of Equalization; they were the vices of the Court. They were not the vices of the Attorney-General. They were the vices of the statute and Constitution of the State. And the true contention for intelligent men to make with regard to this matter, men who think more of being statesmen than of being mere politicians—the true contention for such men is to amend the law until we have a valid law, and then try to collect the taxes; not to hoodwink and fool the people of this State by making them think that because we have voted for a bill to reassess taxes by a method which has been declared again and again invalid, that thereby we have performed a service for the State; for thereby we have not.

Now, a little more about these stipulations signed by Attorney-General Marshall. The Attorney-General finds fault because Mr. Marshall did not do better. Controller Dunn specially finds fault because Attorney-General Marshall did not do better, and claims that the Attorney-General of the State ought to have known better, and that he (Mr. Dunn), although not a lawyer, knows better.

Now, let me relate to you something that transpired not more than three days ago, that will show how just it is to cast this censure. There is not a lawyer here, I suppose, who does not know that when a suit is brought to recover taxes, and tried before a Court, there must be findings, which findings must cover a large number of points. First, there must be a finding that the tax was levied; next, there must be a finding that the tax was assessed; next, there must be a finding that it was properly entered in the books, that it was properly recorded here and properly done there, until the whole field of the levy and the assessment of the tax has been covered. Now, they find fault with Attorney-General Marshall for not having drawn a perfect stipulation in an entirely new class of cases. Now, Mr. Haymond having sent to this committee a communication that he would sign a stipulation by which a case would go to the Supreme Court upon these matters—tax matters—on Saturday a number of gentlemen of good standing—and I will name them—Mr. Ostrom, the Deputy Attorney-General of this State, Mr. Dunn (the State Controller), Mr. Storke, and Mr. Shanahan, without telling anybody their business, went quietly to San Francisco and took with them a stipulation in the rail-

road tax cases. They went to Mr. Haymond's office and presented it to him to sign. He looked at it and said: "I have signed all stipulations on behalf of the State which have been presented to me, and I will sign this one." And thereupon he signed it; and when he signed it he said: "Now, gentlemen, I have signed your stipulation, but on that stipulation you will lose the case." Now, what was the matter with this stipulation? Mr. Storke was one of these gentlemen; he handed it over to Mr. Storke. Now, what do you suppose these men—the present Attorney-General of the State, who finds fault with the past Attorney-General of the State; the Controller of the State, who finds fault with Attorney-General Marshall for having signed this other stipulation; Mr. Shanahan and Mr. Storke, good lawyers, I take it, members of this committee who are disposed to find fault with Attorney-General Marshall for having signed this stipulation; and Mr. Ostrom, the father, or godfather, at least, of this Bill No. 17. What do you suppose that stipulation contained, you lawyers? That stipulation was that the judgments and findings in three railroad tax cases in the United States Circuit Court should be set aside, and that when the judgments and findings had been set aside, that new findings should be made; and that the findings in those cases when so made, should be but one finding and that finding should be that the mortgages upon railroad property were not deducted in the assessment. Now, think of that, will you? For men who find fault because a past Attorney-General signed a stipulation which they find fault with, to go down there and show their wisdom. These men who want to cast motes out of other people's eyes, go down to Creed Haymond and sign a stipulation with him, which they take there prepared, and going secretly, telling nobody what they are going to do for fear that they will be found out, and when they have got through with what they have done, they have got a stipulation that the three cases shall be submitted to the Supreme Court of the United States upon a single finding, and that finding that the mortgages upon railroad property were not deducted in the assessment. The Attorney-General signed that on behalf of the State. These are the men who find fault with such a man as General Marshall, because before these tax cases had been litigated at all, he drew and signed a stipulation which, in the light of subsequent events, proves defective. First cast the beam out of your own eye before you try to take the mote out of your brother's eye. These men finding fault with the past Attorney-General because he signed a defective stipulation. Why, it would make a jackass laugh, if a jackass could know some law, to know of such people doing such things.

Now, gentlemen, I want to talk a little about the bill, and I want to preface what I say about the bill by calling your attention to some of the facts. This is a case of a mountain laboring and bringing forth a mouse.

Mr. Haymond then told these gentlemen what an utterly ridiculous thing they had done, and said, "Gentlemen, we want this question settled. We want it settled, so that there can be no question about it. It has been decided by the United States Supreme Court, but we want it so decided that everybody will be satisfied. When your session of the Legislature is over, come down here and I will sign a stipulation which will take a case to the United States Supreme Court and settle the matter." And I guess probably the Attorney-General, having got a little light, has sent some of his deputies down there to get a new stipulation signed; but whether it will be any better than the other I have no means of knowing. I want to talk now a little about this bill, and to preface those remarks I want to make a statement or two. A bill was presented by Mr. Ostrom in the Assembly, and by Senator Langford in the Senate, the two bills being identical,

and the Assembly Bill being numbered 17—a perfect bill which was to make the railroad pay their taxes. It would not accomplish anything but that, but it would accomplish that. It was presented, and a joint meeting was called. They met and discussed the matter about two hours. What was the result of the discussion? The result of the discussion was that at the end of the discussion, after two hours, or probably a little more, they did what? Say that this bill is a good bill and we can enforce this bill? No, sir. They pulled that bill down, every part of it; they didn't leave a line of that bill. They made an entirely new one, and brought it in. And I say to you that if the Attorney-General and Controller, as little as the Controller knows about law, will sit down here and listen to any man who understands the subject of taxes talk about this bill two hours, they will pull down that bill, every line of it, and alter it again. I am not going to talk two hours about it. I am going to call your attention to some parts of the bill. Now, in the first place, let me call your attention to this fact.

MR. DIBBLE: What was done with that so called substitute; it has not been reported to the House? The report of the committee was adverse to Senate Bill No. 17. The minority report reported a substitute, so the question before the House will be what?

MR. CROSS: The adoption of the substitute as an amendment, as I understand the matter, without a doubt.

MR. DIBBLE: I don't know about that. If the majority of the committee had recommended the substitute, that would be the question before the House.

MR. SEAWELL: The evidence was taken on Bill 17, the committee declined to recommend it. The minority of the committee filed a minority report recommending the substitution of this bill.

MR. DIBBLE: Then the question before the committee will be, Shall the minority report be substituted for the report of the committee? The question will then come up in order to get this substitute before the House, the House must adopt the minority report.

MR. SEAWELL: Yes, sir; that is right.

MR. CROSS: Let me state what I should have stated with a little more accuracy. When the argument had been made upon Bill 17, the Attorney-General got up and said that the friends of the measure had concluded to present a substitute for Bill 17. The friends of the measure had concluded to present a substitute for 17: so that now, as I take it, those who are the friends of this kind of legislation bring this forward as their bill. Now, then, I want to call the attention of the committee to a few matters that make the proposed substitute utterly ridiculous in the eyes of a lawyer who has time to examine it. Now, upon what property is a tax levied, upon what property? The Code provides that the State tax is levied upon all the property of the State. The county tax is levied upon all the property of the county. That is what the taxes are levied upon. It is not levied upon the property assessed, it is levied upon all the property.

Now, let us take up this bill and just look at it. These levies were made in a particular year; there can't be any question but what the levies are all right. The State Board of Equalization, at a proper time, simply passed the resolution, or ordered that the State tax be fixed, which is the same thing as levying at such a rate. The State tax is fixed or levied at such a rate on all the property in the State; they don't say on all the property assessed, but on all the property in the State. The County Boards of Equalization, at the proper time, passed a resolution that they had levied upon all the property of the county and set a rate of taxation. Now, that is a

levy made upon all the property; meanwhile assessing has been going on; some property has been assessed and some has not; some has been assessed too high and some has been assessed too low. But in every year a great deal of property escapes taxation, escapes assessment. The tax is levied upon all, but it is only assessed upon what the Assessor finds.

Now, let us see what this bill says upon that statement. I will not read the provisions of the Code, for I take it that you gentlemen are so familiar with it that when I call your attention to any particular point that we will agree on the facts.

“Section 1. Every tax, excepting poll tax, levied for the year 1882, which is invalid”—what is it that is invalid, the tax? There isn't any such a thing as an invalid tax; there may be an invalid assessment, but there isn't any such thing as an invalid tax—“which is invalid by reason of any error or irregularity in the assessment.” Now, what a bill that is. Any tax which is invalid by reason of an irregularity in the assessment. That is not what was the matter with these railroad taxes at all. It was not the tax that was invalid; it was not the levy that was invalid; it was the assessment that was invalid.

Now, what are you doing about this bill? You are passing a bill that an invalid tax shall be relieved. There has not been any such thing, and can't be any such thing. The thing that was invalid in all these railroad cases was the assessment. An assessment made in accordance with the findings prescribed by a law proved to be insufficient and invalid. But any tax which is invalid by reason of error in the assessment, or irregularity in the assessment, or in any other respect. Now, take this case, as I said before, the tax is levied upon all the property in the State, and all the property in each county. Now then, any such tax which is invalid by reason of error in the assessment or in any other respect—suppose there could be such a thing as an invalid tax. The bill then goes on to say that these taxes should be relieved. The duty of the Assessor in each county will be to go back to 1882 and make a research of every piece of property from that time to now, and if he finds any property which has escaped taxation, for any reason whatever, then he has got to go to work and assess that for \$1,000, \$2,000, \$3,000, \$4,000, \$5,000, \$6,000, or \$7,000, according as the case may be. Now, you have got your Assessors a nice job. You pass this bill, and you go home with it in your hand, and your Assessor goes to work. This is a duty imposed upon your Assessor; he must do this thing. And when the Assessor brings you the bill and asks you how he is going to do it, are you going to tell him to go to your local banks and find out if there is anything in there that has escaped taxation for a series of years, and then find out who to assess it to? His duty is to assess it to the man originally levied for it.

MR. SEAWELL: Does that bill apply simply to personal property?

MR. CROSS: All property. It does not distinguish at all.

MR. SEAWELL: The Code says that the word property means real and personal property.

MR. CROSS: Yes, sir; that is a good answer.

Now, I will say that there is not a line or sentence in this bill which is not just as susceptible of biting criticism as are those that I have already read, but out of mercy to the committee, I don't propose to discuss them. I believe that the man that dictated this substitute, dictated that wonderful stipulation which was taken down to Creed Haymond, and which has covered them with endless glory. And there is not a thing in this bill which is as defective as that stipulation which was taken down there by the Deputy Attorney-General and the Controller.

Ask some of those gentlemen to show that stipulation to you, Mr. Chairman. I never have seen it. Ask some of those gentlemen to show it to you. Now I wish that I had time to make fun of this whole bill, but neither I nor you have.

Let me call attention next to the last section of the bill; a section which was a sort of addition, and which, when read, Mr. Storke said, "I will not vote for that bill with that provision in there." He said, "I will not vote for that bill with that provision in there." And yet I think that he feels as much ardor in the matter of trying to force these people to pay a large amount of taxes as anybody.

Now, the object of a law to the State, is what? To decide some question of right as between parties. It is always founded, or based, or called for by something that has been in dispute. Is there in the history of the world a statute which provides that after a case has been tried and decided, that the parties shall have a right to go back and make an entirely new case—a new cause of action—after the case has been decided? Is there such a thing known? Is there a man who would listen to such a proposition in regard to anything, except it was something about railroads? Is there a man in the world, a lawyer, who would listen to such a proposition as that? And yet here is this provision of this bill which does that exact thing. Until they make a new case up on facts arising entirely subsequent to the decision of the case. Let me say something about that that every lawyer will appreciate. Now, as is well known, a large number of the railroad tax cases are carried into the United States Circuit Court, and any of them can be carried there, and they are carried there as equity cases, to enjoin the attempted collection of taxes or something of that kind. Now, when they get into the United States Circuit Court, what rules control the trial of a case there? All of you had some—all of you have had some experience there. What is the law in the United States Circuit Court in equity cases? It is this: That the method of procedure shall be such as was provided and was in use in the Chancery Courts of England at the time of the adoption of the American Constitution or the independence of the American States, I don't know which. You can't change it; the statute of the State of California can't interfere with it or do anything about it. Those are rules established under the Constitution of the United States. You can't get away from them. What do you suppose the United States Circuit Court will say when a lawyer has the effrontery to stand up and say: "Judge, you have entered a decision in this case, but I want to read you a section of the provisions of the State laws of California." Suppose Judge Sawyer would say: "I am overcome by all this howl about this matter, and I am a goner." What do you suppose the Supreme Court of the United States would do then? What glory for a member of this Assembly or Senate to have passed such a measure, when the United States Supreme Court should have passed on it. What language of invective; what language of satire could be strong enough to picture what a man fit to sit upon the Supreme Bench would say about the State of California trying to pass a law, that when the United States Courts—when a verdict or decision had been rendered—that the case should be stopped until they made new cause of action? I want somebody to answer me that. And yet all this fuss and trouble is about decisions in the United States Courts. They don't come here and howl about decisions of the State Courts in San Francisco, under Judge Levy, or another of the State Courts. They howl about the United States Circuit Court and the United States Supreme Court. That is where all the mischief is done; and yet there is a provision of law under which they could not come nearer—

any nearer to touching a tax case, than I could come now to kissing the brow of Mount Shasta.

Now, if these gentlemen, and I desire to be a gentleman in all these discussions, should verily believe that it is right to assess one class of people by deducting their mortgages, or one class of properties by deducting their mortgages, and assess another class of properties without deducting their mortgages, and distinguishing in that way between properties and property owners of their own State—to those gentlemen I desire to accord all of the courtesy and kind feeling which is due to their sense of what is right and just in such matters. And I desire to treat their views with the utmost consideration, and not say anything which could cause them to think that there could be any personal feeling getting into such a question as this.

Now, there comes another grave question. The Courts of this State and of the United States have done a great thing in one sense—they have declared this tax invalid. Now, after those decisions have been rendered, do you tell me after that that the Legislature can pass a law which abrogates those decisions? That, in effect, says the Courts have decided that these things are invalid, but over the decisions of the Courts we will validate them. No, sir; those things have been adjudicated and determined against the State, and have passed into a final judgment. There is not power enough in the world—I am speaking of political power—there is not power enough in the world to abrogate those judgments in fact or in effect.

Now, the vice—speaking of what this bill would like to do—not what by its terms it seems to do, or tries to do—the vice of this whole thing is this: That instead of getting at and amending the tax laws of all the taxes, you get in here and pass a bill that you will relevy taxes according to the methods existing, according to the methods now provided by law, which the Courts have decided to be invalid. Your bill is that you will go right ahead and relevy taxes in the same way. And now what more—to pile Ossa upon Pelion—when you have reassessed and relevied this tax, and you go to Court, and the jury renders a verdict that your assessment is invalid, and that your law is not good, then the law you will propose to make is that you will stop the case and do the same illegal thing over again. Now, the bill does not go far enough, if the bill is good. There should be another clause attached to it, that when the second relevy has been made by that same method, and the Court has found that those methods are invalid, or that the law under which the assessment was made is in conflict with the laws of the United States, that the Court shall again suspend judgment until they do the same thing over again. And then there should be another clause—another section of the same kind, added one after another, so as to reach the end of time; so that you will go right on reassessing or relevying taxes according to the same methods that the Courts have decided invalid.

That is the difference between demagogism and statesmanship. One fools the people and accomplishes nothing, and the other accomplishes everything, and claims no credit for it, except such merit as arises from doing a thing right and doing it well.

Now, gentlemen, I have got a suggestion to make. I once acted with the Judiciary Committee; was Chairman of it. I, like you, was for sixty days covered up with labor, covered with bills, covered up with my friends needing this and my enemies wanting that, until I was not able to do anything right and well, or as a man ought to accomplish anything; and if any man came to me to relieve me, and to try and help me, I was always thankful to him, if he acted honestly and sincerely. It was generally left to the clerk of my committee to make the reports. And I suppose in this

committee there is not a member who has the time to make up and draw a careful report of this case. Now, in order to assist the members of this committee or the clerk, any one who wants to have the assistance of it, I have drawn a skeleton of a report which I desire to present to you, and if there is one thing which is not in strict accordance with the evidence in the case, if there is one thing in it on which there is a particle of evidence to the contrary, then fling away the whole business. But I will present it, and if you want to make any use of it, you are at liberty to do so, and if you do not, I have no fault to find.

This bill is based upon the theory that a resolution was passed to investigate the subject of railroad taxes in the State of California; that you have made the investigation under the resolution: and that you report what you have learned by the investigation. Now, then, I call your attention to this fact: That never but once in the history of all this litigation has the question been decided by any Court as to whether the Constitution of the State of California with regard to railroad taxation is in conflict with the fourteenth amendment of the Constitution of the United States. There has been but one decision on that point. That was the decision of Judges Sawyer and Field, and that decision was that the method of taxation of railroad taxes of the State of California is in conflict with the Constitution of the United States.

Now, I believe this, that under a stipulation which will be drawn and filed, and presented to the Attorney-General, that a case will be taken to the United States Supreme Court and that they will pass on that question, and that when they do pass upon it I don't see how any man can claim that there is not discrimination in the taxation of railroad properties from the method pursued in assessing other properties of the same kind.

Then what will be the result? Then the result will be that we will have no valid tax laws for railroad properties. We have known that for years. Here is a bill presented which is a farce. In fact, I don't know that I would be going too far if I would say that the last two letters of that word "farce" should be changed. There has not been a decision of any Court, Superior or Supreme Court of the State, or Circuit or Supreme Court of the United States, that, under the existing methods, these people can be compelled to pay one cent of the taxes. And all of this \$3,750,000 that have been paid since the adoption of the new Constitution has been so much that they have given to the support of the institutions of the State, because I don't think that a man will pay a large amount of taxes unless he feels that the law requires him to do it. I don't think that there is a member of this committee that is so generous that if he is assessed in an amount that he thinks or considers is absolutely unfair, and the Courts decide is unjust, that he would after that turn around and pay the tax. But these railroads have done it. They have paid \$3,750,000 into the counties and the State under those circumstances. Our tax system is a farce as to the taxation of railroad properties. We need a method of taxation, a perfect method, a method that will be fair and just, both to the people of the State and to the railroads.

We come here to the Legislature—one hundred and twenty of us—to sit sixty days, and are overworked all of that time. The members who could form such a bill have such an enormous amount of work on hand to accomplish that if they gave to the railroad tax bill three or four hours, they have given all the time that they could spare to it.

Now, what is the result? That when a bill is gotten up, it is like that bill that was adopted in 1883, which provided that steamboats should be assessed. Even when the Attorney-General and the Controller and Mr.

Maslin got together and formulated the best bill they could, they got a mice in it. The bill was passed just as they presented it. I moved to strike steamboats out of the bill, and they would not have it, because they said I was a railroad man. Mr. Gildea was watching the bill; the records show it. They would not have it because the Attorney-General and Mr. Maslin and the Controller wanted it there. The result is that when you come up here to the Legislature to form a bill on this subject, there isn't a set of men in the Legislature who can give to the matter sufficient time to get up a bill.

A measure ought to be formulated. That the Attorney-General and the Controller are incompetent is shown by the fact that they offered a bill, No. 17, and immediately offered a substitute. They themselves took the life of their own proposed legislative offspring or bantling or whatever you may call it.

Now, what should be done is this: Able men should be selected; they should be given adequate time to prepare a bill—a proper law; they should be paid for it by proper compensation.

There is not any law that can be presented at this session. This session is already in the throes of dissolution. When you hear men laughing and cracking jokes about bills, and taking up bills out of order, that means that dissolution is close at hand. There is no time in this session to formulate a bill and have it passed. Now, what could be decently expected of this session of the Legislature?

When the Attorney-General, and the Controller, and Mr. Maslin, and others of that kind, who are eager to compel the railroads to pay taxes; when men like that come in here, and present such a bill as No. 17 that will not bear two hours' talk, the matter should be given to somebody else to determine it—to attend to. There is material in this Legislature that if they had the time could formulate laws which would be valid tax laws upon this class of legislation. This Legislature ought to provide for it. My judgment of what should be done is that this Legislature should now, as quickly as possible, provide a bill for a commission, consisting of members of both houses, to formulate a bill to submit to the next Legislature. Because, mark you, there is not a bill before this Legislature to provide for the taxation of these properties. Mr. Hall's bill proposes a section which should be adopted, leaving franchises and steamboats out of Section 3665, so that the State Board of Equalization can go according to the law, and improve the method to that extent. But even then there will remain this constitutional question, and how to overcome that is a difficult question, and there is not one of us who would sit down and pretend to formulate a bill on that question, unless we had abundant time to examine the decisions of the Courts, and to consult the text-books and the decisions upon the constitutional tax laws, and all that kind of thing.

So I am going to suggest, and I hope there will be no impropriety in it, because the same matter would perhaps present itself to the committee—that this committee report to the Assembly a bill, which bill shall provide for the appointment of a committee or commission, if you will, to, during this time and the next session of the Legislature, revise the railroad laws of this State.

Now, there is not a man who has been on the State Board of Equalization, there is not a County Assessor in the State, and I don't believe there is a Tax Collector in the State, and I don't think there is one lawyer in the State, but will say as soon as he is asked that our revenue system needs revision, and that it will require men to make the revision who are prepared to spend the time and do it properly and do it well.

Now, I present this skeleton report, which you can do with whatever you will. [Reading report.]

Now, to conclude, I wish to thank this committee for the attention you have accorded me in this matter, and I am only sorry that so few of the members are here to-night.

WEDNESDAY, March 6, 1889.

MR. LEZINSKY: Mr. Chairmen, and members of the committee, the investigation now pending before the committee has shown that certain property of the railroad companies has escaped taxation through the assessments being declared invalid. On a former consideration of this matter, a statement was made by Mr. Dunn, the Controller of this State, that in the cases brought to recover the taxes of 1883 and 1884, that a decision had been rendered against the State upon findings which were false, and that such findings were the basis of the decision of these cases in the Supreme Court of the United States. Whether this statement is true or false has been the main matter of investigation before this committee. The records of the Circuit Court of the United States were brought before this committee, and it appears from such records that in the cases of 1883 and also in the cases of 1884, and in each of these cases, is the following finding: "Said assessment," referring to the assessment mentioned in the finding, "included all property and kinds of property mentioned in Section 3665 of the Political Code of California, as amended March 9, 1883, except depots, stations, shops, and buildings erected upon the space covered by the right of way, which last mentioned property was assessed, as provided in the said section, by local Assessors."

MR. DAMRON: What case is that?

MR. LEZINSKY: This case [referring to the decision in 127 U. S.] is the case—I am quoting from the decision in the case—the general finding was in all of the cases of 1883 and 1884, in every single one of them; and I am quoting that finding as set out in the decision of these cases in the 127th United States Reports. These cases were supposed to have been tried and submitted to the Court upon a stipulation concerning the testimony taken in the cases of 1881-1882, which had been actually tried, so far as the same was applicable to these cases. And upon certain points the stipulation stated that the cases were submitted upon testimony taken upon such points, and one clause of this stipulation is that as to certain paragraphs of the answer that the cases were submitted upon testimony offered by the defendant to prove those allegations of the answer, and upon testimony offered by the plaintiff to disprove those allegations of the answer. And these paragraphs of the answer are the allegations which allege that the State Board of Equalization did willfully and designedly include in their assessment the values of the steamers and the values of the fences. Judge Sawyer testified that there had been no trial whatever of these cases, and that no testimony of any character had been produced or submitted to him; that there had been no trial of any of the tax cases, or testimony taken or submitted or produced in any of the tax cases since the trial of the case of the County of Santa Clara against the Central Pacific Railroad Company, which involved the taxes for 1881-1882. Mr. Baggett testified that he was one of the counsel purporting to represent the interests of the State, and that the contention was made that the testimony

upon the question of fences and steamers in the case of 1881-82, would not cover or apply to the actions brought for taxes for 1883-84; and that it was by reason of such contention that the special findings upon those facts which had been made, a part of the findings of the defendant were stricken out, as appears by the red ink alterations of these findings. Nevertheless, a general finding which covered the allegation of the answer as to steamers, did remain a part of the findings. And upon this finding the cases were decided against the State in the Supreme Court of the United States.

MR. DAMRON: That is a fact?

MR. LEZINSKY: Yes, sir; that is a fact. Upon that general finding these cases were decided against the State. Now, there was also one other point involved in certain cases upon which the decision also went, but this was a point which was decided in all of the cases, which it was stated was applicable to all of the cases, and upon that the decision rested. And, therefore, I submit to this committee that the testimony produced before the committee has proved beyond question that the allegation of the answer and the finding of the Court are absolutely and unqualifiedly false. Shortly before the assessment for taxes for the year 1883 was made by the State Board of Equalization, a decision was rendered by the Supreme Court of the State of California, wherein it was decided that steamers belonging to the railroad companies should be assessed by the local Assessors, and not by the State Board of Equalization. And the members of the State Board of Equalization, Messrs. Gildea, Morehouse, Wilcoxon, and Dunn, uniformly testified that at the time of the making of the assessment for that year, they being cognizant of the decision of the Supreme Court on that point, discussed the matter and did willfully and designedly not include in their assessment the values of any steamers or any steamer whatsoever.

MR. DAMRON: When was that decision of the Supreme Court of this State?

MR. LEZINSKY: In June, 1883, and this assessment was not made until August, 1883. Mr. Maslin, who was the Clerk of the Board at the same time testified to the same effect, and also that he made an affidavit to that effect; it was made under oath and handed by him to Mr. Fayette Marshall, the then Deputy Attorney-General. Concerning this finding, Judge Sawyer testified that he was not aware of its presence in the findings and that it had escaped his notice. Mr. Baggett, one of the representatives of the State, admits that there were no facts to support this finding—no evidence to support this finding; which, we submit, is a statement that the same is false. Mr. Marshall, the then Attorney-General, although sent for, has not dared to appear before this committee, to be confronted by his gross negligence and heinous blunder. And since there is no proof before the committee, showing him to have been a knowing party to any fraud against the State, I shall make no graver accusation concerning his actions.

MR. DAMRON: Who notified him to appear?

MR. SEAWELL: He was served with a subpoena. He sent a telegram and also the certificate of Dr. McNulty to me, stating that he was not in a physical condition to come.

MR. LEZINSKY: As grave as this matter appears, if he had any explanation to make of this matter, he would certainly have appeared and made that explanation. No explanation of this fraud upon the State has ever been attempted to be made by the attorneys or employés of the railroads connected with this case, or by those who had the charge of the preparation and signing of these findings. And why? Because none could be made. Therefore I conclude and assert that the fact concerning this finding is as

follows: The railroad companies, the defendants in these cases, knowingly, willfully, and designedly, perpetrated a fraud upon the people of the State. This fraud was permitted to be successful through the negligence of Mr. Marshall, the then Attorney-General, and his representatives. And the ultimate object of this fraud is but too well seen in the decision of the Supreme Court of the United States, when the cases came up there on appeal. Such decision is contained in 127 United States Reports, and is found on pages 26 to 35, and, so far as touching upon this point, is as follows:

“It was also alleged in defense that the Board of Equalization included in the assessments a valuation of rights, franchises, and property, which they had no authority to assess; as, for example, franchises granted to the companies by the United States, and ferryboats, fences, and other property subject to be assessed by the local county Boards; and that the assessments were for aggregate amounts, not showing on their face what part of the valuation represented the property illegally included therein; thus rendering the entire assessment in each case void. It was on this latter ground that the judgments for the defendants in the former cases were affirmed. If these defenses, or either of them, are supported by the facts, it is unnecessary for us to decide the question raised under the fourteenth amendment of the Constitution. The questions arising under that amendment are so numerous and embarrassing, and require such careful scrutiny and consideration, that great caution is required in meeting and disposing of them. By proceeding step by step, and only deciding what it is necessary to decide, light will gradually open upon the whole subject, and lead the way to a satisfactory solution of the problems that belong to it. We prefer not to anticipate these problems when they are not necessarily involved.

“The ground on which it is alleged that the assessments in question were made to include property which the State Board had no authority to assess is to be found in Article XIII, Sections, 9 and 10 of the State Constitution. Those sections are as follows:

“SEC. 9. A State Board of Equalization, consisting of one member from each congressional district in this State, shall be elected by the qualified electors of their respective districts at the general election to be held in the year one thousand eight hundred and seventy-nine, whose terms of office, after those first elected, shall be four years, whose duty it shall be to equalize the valuation of the taxable property of the several counties in the State for the purposes of taxation. The Controller of the State shall be ex officio a member of the Board. The Boards of Supervisors of the several counties of the State shall constitute Boards of Equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; *provided*, such State and County Boards of Equalization are hereby authorized and empowered, under such rules of notice as the County Boards may prescribe as to the county assessments, and under such rules of notice as the State Board may prescribe as to the action of the State Board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll.

“SEC. 10. All property, except as hereinafter in this section provided, shall be assessed in the county, city, city and county, town, township, or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in the State shall be assessed by the State Board of Equalization at their actual value, and the same shall be appor-

tioned to the counties, cities and counties, cities, towns, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities and counties, cities, towns, townships, and districts.”

MR. DUNN: Wouldn't it be well for you to call the attention of the committee especially to the fact that in the case of the California Pacific Railroad, and also in the case of the Northern Railway, no steamers were assessed?

MR. LEZINSKY: I will do that.

MR. DUNN: That was the last decision.

MR. LEZINSKY: We will show what these decisions proceed upon, and how they decide the matter. It says:

“The last section shows explicitly that, in regard to a railroad, the State Board has power to assess only five things: the franchise, roadway, roadbed, rails, and rolling stock; the County Boards are authorized to assess all the rest of the property. If the State Board includes in its assessment any more of the railroad property than it is authorized to do, the assessment will be *pro tanto* illegal and void. If the unlawful part can be separated from that which is lawful, the former may be declared void, and the latter may stand; but if the different parts, lawful and unlawful, are blended together in one indivisible assessment, it makes the entire assessment illegal. This is so well settled that it needs no citation of authorities farther than to refer to the opinion of the Court in the former cases. (118 U. S.) In the present assessments all parts of the property are blended together and are inseparable. If it be true, therefore, that property not authorized to be included in the assessments is included therein, the assessments must be declared void.

“The Legislature of California, in passing laws for carrying out the principles and methods of taxation laid down in the Constitution, has deviated from its words, and has adopted some provisions which would seem to be a departure from it. As the State Board of Equalization in making the assessments in question undertook to follow the law, it will be necessary to examine it. By Section 3628 of the Political Code, as amended in 1880, it was provided as follows: ‘The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State shall be assessed by the State Board of Equalization, as hereinafter provided for. Other franchises, if granted by the authorities of a county, city, or city and county, must be assessed in the county, city, or city and county within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business. All other taxable property shall be assessed in the county, city, city and county, town, township, or district in which it is situated. The Assessor must, between the first Mondays of March and July in each year, ascertain the names of all taxable inhabitants, and all property in his county subject to taxation, except such as is required to be assessed by the State Board of Equalization, and must assess such property to the person by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock of the first Monday next preceding.’

“By Section 3665 of the same Code, as amended by the Act of March 9, 1883, it is, amongst other things, provided as follows: ‘The State Board of Equalization must meet at the State Capitol on the first Monday in August, and continue in open session from day to day, Sundays excepted, until the third Monday in August. At such meeting the Board must assess the franchise, roadway, roadbed, rails, and rolling stock of all rail-

roads operated in more than one county. Assessment must be made to the corporation, person, or association of persons owning the same, and must be made upon the entire railway within the State, and must include the right of way, bridges, culverts, wharves, and moles upon which the track is laid, and all steamers which are engaged in transporting passengers, freights, and passenger and freight cars across waters which divide the road. The depots, stations, shops, and buildings erected upon the space covered by the right of way, are assessed by the Assessor of the county wherein they are situate. Within ten days after the third Monday in August, the Board must apportion the total assessment of the franchise, roadway, roadbed, rails, and rolling stock of each railway, to the counties, or cities and counties, in which such railway is located, in proportion to the number of miles of railway laid in such counties, and cities and counties.'

"Here, it will be perceived that the Legislature undertakes to define what things are and what are not comprised within the five categories of railroad property assessable by the State Board, and declares that they include not only the entire railway within the State, the right of way, bridges and culverts, but also 'the wharves and moles upon which the track is laid, and all steamers which are engaged in transporting passengers, and passenger and freight cars across waters which divide the road.' This is clearly an enlargement of the terms of the Constitution. Steamers, at least, are not, and have been held by the Supreme Court of California not to be, embraced in the five categories.

"Now, one of the grounds of defense, set up by the Central Pacific Railroad Company in Nos. 660 and 1157, by the Northern Railway Company in No. 662, and by the California Pacific Railroad Company in No. 663, is, that the value of their steam ferryboats was blended by the State Board of Equalization with the other values contained in the assessments. The Central Pacific Company, in its answers (and the others contained similar averments), says: 'The western terminus of the said railroad of defendant is in the City of San Francisco, on the west side of the Bay of San Francisco. The distance across said bay is five miles, and the whole thereof is part of the navigable waters of said bay. The cars of the company are transported from the end of the railroad track of said road on the eastern side of said bay to the end of the railroad track on the western side of said bay, on steam ferryboats belonging to the defendant, built, owned, and constructed for that purpose, and are of great value. For more than four years past the defendant has been the owner of two steam ferryboats, one of the tonnage of one thousand five hundred and sixty-six tons, and one of the tonnage of one thousand and twelve tons; and during the whole of that time has used said boats for the purposes aforesaid. Said boats now are, and for more than four years last past have been, of a class which by law are required to be registered; and now are, and for more than four years last past have been, duly registered and enrolled in the City and County of San Francisco, State of California. The State Board of Equalization, in making said pretended assessment of the said roadway, roadbed, rails, and rolling stock, did willfully and designedly include in the valuation thereof, the value of said boats; and the value of said boats is blended in said pretended assessment with the value of said roadway, roadbed, rails, and rolling stock; and there is no means by which said value can be separated from the valuation placed by said Board upon said roadway, roadbed, rails, and rolling stock, or either of them.'"

So as to bring the case entirely within the decision of the Santa Clara case, this allegation is sustained by the Court below in its findings of the facts in the cases referred to in all of the cases. The Court says further:

"The finding in 660, and substantially the same in the other cases, is as follows: That on the eighteenth day of August, 1883, the State Board of Equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by Section 10 of Article XIII of the Constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing, upon the franchise, roadway, roadbed, rails, and rolling stock of said railroad against defendant. Said pretended assessment was not made separately upon the franchise, roadway, roadbed, rails, and rolling stock, or any properties of said railroad, but all of said property was blended together in making said assessment, which assessment was then and there so entered upon the minutes of said Board. Said assessment is the assessment upon which the several taxes mentioned in the complaint herein are based, and no other assessment than the aforesaid was ever made of said property or any part thereof for said fiscal year. Said assessment included all property and kinds of property mentioned in Section 3665 of the Political Code of California, as amended March 9, 1884, except depots, stations, shops, and buildings erected upon the space covered by the right of way, which last mentioned property was assessed, as provided in said section, by local Assessors.

"This is a clear affirmation of the allegation of the answer. section 3665 of the Political Code, as amended March 9, 1883, requires the State Board of Equalization to include in their assessment of railroad property 'all steamers which are engaged in transporting passengers, freights, and passenger and freight cars across waters which divide the road.' It is a matter of public notoriety, as much so as the existence of the railroad itself, or that of the Sierra Nevada, or any other geographical feature on the route, that the railroad companies, in the cases referred to, have steam ferryboats engaged in the transportation of passengers across the Bay of San Francisco and the Straits of Carquinez; and that without such means of transportation those waters could not be crossed.

"The question whether steamers and ferryboats should be included in the property assessed by the State Board of Equalization, or in that assessed by the County Board, was distinctly raised in the case of San Francisco vs. Central Pacific Railroad Company, 63 Cal. 467, 469, and decided in favor of the County Board. That was an action brought by the City and County of San Francisco against the company to recover taxes imposed upon it by virtue of an assessment made by the County Board upon the same ferryboats now assessed by the State Board. The Supreme Court of California decided against the company. Its findings of facts was as follows. namely: 'That the defendant is a corporation existing under the law of the United States, and of this State; owner of a line of railroad known as the Central Pacific Railroad, extending from a point in the City of San Francisco to Ogden, in the Territory of Utah; that the length of said road in the City and County of San Francisco is four miles from a point within said city to the eastern shore of the southern arm of the Bay of San Francisco; that from said point on the eastern shore to a point on the western shore of said bay, where the railway of defendant again commences, is about twelve miles; that across said bay no line of railroad has been constructed; and freight and passengers carried upon said road are taken across said bay upon steam ferryboats; that upon the decks of said vessels are laid railroad tracks, etc.'

"After giving judgment for the plaintiff upon these facts, the Court says: 'The sole question presented for decision herein is whether the steamers Thoroughfare and Transit, mentioned in the above findings, are to be

assessed by the City and County of San Francisco or by the State Board of Equalization. The property to be assessed by the Board is defined in the tenth section of Article XIII of the Constitution of 1879. It is the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in the State. All property other than the above mentioned is to be assessed by the local Assessors. Are the steamers above named embraced within the category of property named in the section above referred to? The relation of such steamers to the Central Pacific Railroad Company is set forth in the findings.' The Court then proceeds to show that the ferryboats cannot be included in either of the five categories mentioned in the Constitution, namely, in either the franchise, roadway, roadbed, rails, or rolling stock; and concludes as follows: 'We are of the opinion that the assessment of the steamers above mentioned pertain to the local Assessor, and was properly made by the Assessor of the City and County of San Francisco.' The decision was made in June, 1883, and is a construction of the Constitution of California. It follows that the Act of March 9, 1883, as reproduced in Section 3665 of the Political Code, departs from the constitutional provision; and that the assessments in following the Act are also unconstitutional and void."

That is the very case that the gentlemen of the State Board of Equalization had in mind and were cognizant of when they made this assessment and willfully left out the steamers.

MR. DAMRON: It was in June, 1883?

MR. LEZINSKY: Yes, sir; June, 1883. This decision was made in June, 1883, and is a construction of the Constitution of the State of California.

The Court further says: "It follows that the Act of March 9, 1883, as reproduced in Section 3665 of the Political Code, departs from the constitutional provision; and that the assessments in following the Act are also unconstitutional and void."

Still, as a matter of fact, the assessment did not follow the Act, but the Constitution.

The Court further says: "In No. 1157, one of the cases against the Central Pacific Railroad Company—being for the taxes of the year 1884—the Court finds that the State Board of Equalization, in making the assessment, did knowingly and designedly include in the valuation of the roadway, the value of fences erected upon the line between said roadway and the land of coterminous proprietors. This brings that case precisely within the decision made in the former cases reported in 118th United States Reports."

And the testimony proves—the testimony of the members of the State Board of Equalization—proves as conclusively as can be, and as directly as can be, that they did not include in the assessment for any of these years the value of any fences or steamboats. And those findings are the very findings which on the inspection of the record appear in pasters attached to these findings.

Now, the opinion then proceeds and says: "Another defense set up by the Central Pacific Railroad Company in the three cases against it, namely, Nos. 660, 664, and 1157, and by the Southern Pacific Railroad Company in No. 661, is that the State Board of Equalization included in their assessments in said cases the value of the franchises conferred upon said companies by the United States, which, it is contended, is repugnant to the Constitution and laws of the United States, and therefore void. Thus, in No. 660 the Central Pacific Railroad Company, in its answer, after reciting the various Acts of Congress conferring franchises and privileges and imposing duties upon the company, avers that it is a Federal corporation,

and holds its corporate powers and franchises under the Government of the United States, and that the said Government has never given to the State of California the right to lay any tax upon the franchise, existence, or operations of the company. Similar averments are made in other cases, 664, 1157, and 661. The Court finds in each of these cases that the assessment made by the State Board of Equalization included the full value of all franchise and corporate powers held and exercised by the defendant. The first question, then, is, whether the defendants in these cases held any franchises granted to them by the Government of the United States. Of this there can hardly be a doubt.

"The Central Pacific Railroad Company was constituted by the consolidation of two State corporations of California, but derived many of its franchises and privileges from the Government of the United States. The findings of the Court below on this subject are as follows, to wit:

"That on the twenty-eighth day of June, 1861, a corporation was formed and organized, under the laws of the State of California, under the corporate name of the Central Pacific Railroad Company of California. Said corporation was formed for the purpose of constructing, owning, and operating a line of railroad and telegraph, commencing at the City of Sacramento, in said State, and running thence through the Counties of Sacramento, Placer, Sierra, and Nevada, to the eastern boundary of said State, in the expectation that its proposed railroad would, when constructed, constitute part of a line of railroad extending from the Missouri River to the Pacific Ocean, which line it was then supposed was about to be constructed under the legislative supervision and authority of the Government of the United States, and which line of railroad was afterward so constructed.

"That on or about the first day of July, 1862, the Government of the United States undertook to construct or to be caused to be constructed a line of railroad from the Missouri River to the Pacific Ocean, and to that end, Congress passed an Act entitled 'An Act to aid in the construction of a railroad from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes.' 12 Stat. 489, c. 120."

And then it goes on to decide this franchise case—this question concerning the Federal franchise.

Now, in conclusion, this decision reads as follows: "It follows that in each one of the cases now before us the assessment made by the State Board of Equalization included the value of the franchises or property which the Board was prohibited by the Constitution of the State or of the United States from including therein; and that these values are so blended with the other items of which the assessments are composed that they can not be separated therefrom. The assessments are therefore void. This renders it unnecessary to express any opinion on the application of the fourteenth amendment, as the result would not be different, whatever view we might take on that subject."

That was that it was either a franchise or property. In the cases against the Northern Railway Company and the California Pacific Company there was no question of the franchise, so they were decided solely upon that point of steamers. That there was included property in the assessment by the State Board of Equalization which was prohibited from being included by the Constitution of the State, as there was nothing concerning the Constitution of the United States involved in the cases.

MR. SEAWELL: That is the case in which two points are touched upon?

MR. DUNN: Three points: fences, steamboats, and franchises.

MR. LEZINSKY: The Court in its opinion said that as this finding was in

there, which was the finding that steamers had been assessed, they disposed of the case upon that point, and, therefore, it is not necessary to decide the constitutional question. This is a fact. There is the decision which speaks for itself. This is the California Pacific Railroad Company, and the Northern Railway Company. There are some twelve cases decided here together. California vs. The Central Pacific Railroad Company; California vs. The Southern Pacific Railroad Company; California vs. The Northern Railway Company; and California vs. The California Pacific Railroad Company.

MR. DUNN: Now one of the grounds of defense set up by the Central Pacific Railroad Company in Nos. 660 and 1157; by the Northern Railway Company in No. 662; and by the California Pacific Railroad Company in No. 663, is, that the value of their steam ferryboats was blended by the State Board of Equalization with the other values contained in the assessments.

MR. LEZINSKY: Now, commenting on the argument of Mr. Cross, here, upon Monday night, concerning this finding, that it was a necessary part of these findings because it was a finding that the State Board of Equalization had acted in the manner required by the statute.

MR. SEAWELL: Well, it was a necessary finding to show the regular assessment.

MR. LEZINSKY: But not in that way. It was not necessary to say that they had included in their assessment all property and kinds of property mentioned in Section 3665. It should have been that they had followed out Section 3665 so far as it was not in variance with the Constitution of the State. That is what the Board of Equalization did. They followed Section 3665 so far as it was not at variance with the Constitution of the State, but Mr. Cross says that the only way that that thing can be expressed was to have stated a falsehood, and to have said that they included in their assessment all property and kinds of property mentioned in that section. I say that that is not true. They could have expressed it as I suggested, and it must not have been expressed in this way that Mr. Cross would have you believe was the proper way to express it.

MR. SEAWELL: Well, if he had excepted steamboats, would that have made it all right?

MR. LEZINSKY: There were moles, and culverts, and other things, that would have always raised the same question. And the fact was that the State Board of Equalization, in making that assessment, followed the Constitution, and followed Section 3665 only so far as it was in accordance with the Constitution.

MR. DAMRON: I would like to ask this question, and that is whether there was any record kept of the assessment made by the State Board of Equalization for the taxes of 1883-4-5, that will disclose affirmatively that steamboats, moles, wharves, etc., were not included in the assessment. In session you may have said so. Are there any minutes that will affirmatively show that fact?

MR. LEZINSKY: No, sir; but those things are not mentioned in the assessment, and you cannot as a rule of law infer that a legal power or a legal body act in opposition to the law, but the inference is that they act in accordance with the law; and, therefore, when they make an assessment of the franchise, roadway, roadbed, rails, and rolling stock, it is presumed that they acted in accordance with the law. And then when it appears further by oral evidence, by parole testimony, that they did discuss the matter, and didn't include fences or steamboats in making up the assessment, then it is settled beyond the peradventure of a doubt.

MR. DAMRON: The great trouble seems to me to be that the Supreme Court took cognizance of that finding, which was in fact a special finding, and passed upon the case on that one finding, that and the other one.

MR. LEZINSKY: The railroad companies knowingly, willfully, and designedly perpetrated a fraud upon the people of the State, which fraud was permitted to be successful through the negligence of Attorney-General Marshall and his representatives. The ultimate object of this fraud is but too well seen in the decision of the Supreme Court when those cases came up there to be decided. Now, don't you suppose that when they put that general finding into those findings, that they knew what construction could be placed upon it? That they knew when the cases should go to the Supreme Court of the United States, they would ask for that construction upon it, and then the cases would go off on that. And, as a matter of fact, their principal argument is on that point.

MR. DUNN: Mr. Haymond deals largely with that point. Mr. Edmunds and Mr. Conkling deal with the Federal franchises.

MR. DAMRON: They raised that question under that general finding?

MR. DUNN: Yes, sir; Mr. Haymond dealt largely with that in his argument before the Supreme Court of the United States.

MR. LEZINSKY: Now, it may be urged that as to the cases against the Southern and Central Pacific Railroad Companies, that there were other points decided that were fatal to these cases; which I assert were also fraudulent, for this reason: It is the allegation of the State Board of Equalization including in their assessment a Federal franchise. Now, a franchise is any power or any right that exists in a corporation coming from the sovereign power, which an individual does not hold; that is, the right of eminent domain, etc. Now, the only thing that is assessed is the franchise in the singular, the roadway, the roadbed, the rails, and the rolling stock. Now, there is nothing that affirmatively appears in this assessment that the Board assessed any Federal franchise; and it appears from the evidence of the members of the State Board of Equalization given before this committee, that they didn't take into consideration the value of any Federal franchise. So I say that that fact is also, and was also a fraud upon the people: but, of course, it is not as apparent presumably as this fact concerning the steamers. But I say, that when they made this point before the Supreme Court of the United States, that they must have known, and did actually know that the State Board of Equalization did not assess a Federal franchise; that it was another subterfuge to affect the decision of these cases, and to avoid the payment of their taxes.

MR. DAMRON: Is this due process, having been decided by the Supreme Court of the United States?

MR. LEZINSKY: They admit that; but as to the case of the California Pacific Railroad Company, and the Northern Railway, and the case of the San Pablo and Tulare Railroad, no question concerning a Federal franchise could have possibly arisen; and so, stripped of their fraudulent finding, a decision of the Court must have been had upon the constitutional question raised in those cases; and assuming a decision in favor of the State upon that point, instead of a judgment for the defendant, there would have been a judgment for the plaintiff for the amount of those taxes; now that is the result of those fraudulent findings. If those cases were stripped of those fraudulent findings, then to-day, instead of a decision in those cases in favor of the defendant and against the plaintiff, there would be a decision in favor of the plaintiff and against the defendant: and so far as to the three cases of 1884, the three cases of 1883, and the three cases of 1885, the State would now have judgment against those

railroad companies by which they could collect those taxes, and so far as they were concerned no Langford or Ostrom bills would have been necessary.

Now, what position do we find these railroads assuming when bills are introduced providing for a reassessment in cases where property has failed to pay its taxes? We find them fighting against those bills. What does that amount to? They come in and make a fight against the State getting its just rights in matters where it has lost its rights by their fraud perpetrated upon the people of the State. Because, if the Constitution of the State is not at variance with the Constitution of the United States, and I will assume that it is not, then, under these Acts, that might be passed; a decision could be had and judgments had against these companies which would compel them to pay their taxes. If our Constitution is at variance with the fourteenth amendment of the Constitution of the United States, then no recovery could be had in any case which might be brought under these reassessments.

Now, one other word concerning what might appear concerning the attorneys in this case. Mr. Delmas has appeared before the committee and testified that after the complaint had been filed in these cases, that the Attorney-General, Mr. Marshall, under a decision of the Circuit Court of the United States, stepped in and asked the entire control of these cases; and that from that time forth he had entire control, to do with the cases what he pleased, and Mr. Delmas had nothing whatever to do with the cases; he could not under the decision of the United States Circuit Court. So that Mr. Delmas is not in any way connected with the findings. Mr. Delmas had no control over them. He says that they were not submitted to him—no stipulation was submitted to him, and he had nothing whatever to do with them.

Now, Mr. Cross, in commenting upon this matter, would have you gentlemen infer that Mr. Delmas was connected with the stipulation. And he says that the contention here is that the Attorney-General, Mr. Marshall, was careless or negligent in signing this stipulation. There is no such contention made. The stipulations we will admit were all right. But the findings were not in accordance with the stipulation, and the findings were against the facts; and it is the findings that we have fault to find with, and not the stipulation, or the fact that he signed the stipulation.

Now, as to whether or not in the cases of railroad companies, mortgages should be deducted from the assessment, or whether they should not be deducted, I desire to comment briefly upon the principles of law, and the facts which were perhaps the basis of that provision of the Constitution of the State of California. Now, the ground for the contention of the defendants, is that the railroad companies are denied equal privileges of the law under the fourteenth amendment of the Constitution of the United States, and in this, that while it permits the deduction of mortgages in the assessment of private property, that deduction is not made in the assessment of the property of the railroad companies and other quasi public corporations. That is their contention, as you gentlemen well know.

Now, in the matter of assessment of railroad companies throughout the different States of the Union, an examination of the statutes and the Constitutions of the various States, shows that there is hardly a single State in the Union where railroad companies are not assessed in a manner different from what individuals are assessed. In some of them they pay taxes on their property, paying a certain amount of their net income. In some cases they pay taxes by taking the gross earnings and multiplying it by a certain sum, and that is taken as a valuation of the road, and upon that they

pay taxes; that that certain sum being a certain amount, that would be the interest upon so much. And so in almost every State in the Union, railroad companies are assessed and pay taxes in manners that are entirely different from the manner in which individuals pay taxes. Now, this question was fairly raised in what is known as the Kentucky Tax Case. The decision of the Supreme Court of the United States in those cases was as follows: "There is nothing to forbid a classification of property for the purposes of taxation, and the valuation of different classes by different methods. The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. There is no objection, therefore, to the discrimination made as between railroad companies and other corporations in the methods and instrumentalities by which the value of their property is ascertained. The different nature and uses of their property justify the discrimination in this respect which the Legislature has seen fit to impose."

And the reason of that is this: That a railroad company is a quasi public corporation; it enjoys certain advantages from the sovereign power of the State, and the fact that it is an agency of the sovereign and an instrument of the State, makes it different from any other classification of persons, corporations, or individuals in the State. And so being an agent of the State, will any one deny the fact that the Constitution or the statutes might say that railroad companies shall not pay any taxes whatever, and if the Constitution or the statutes made that provision, could it then be urged by any man against whom taxes were assessed, that he could say: "I must not pay taxes, because the Constitution of the State provides that railroad companies shall not pay taxes. There is a discrimination as between the railroad companies and myself which makes me free from the payment of taxes." And that argument might just as well be urged, as to say that because a discrimination is made against railroad companies (as they put it), that thereby they are relieved from the payment of any taxes. If a discrimination was made as between persons, then a person could undoubtedly come into Court and say, "There is a discrimination made as between me and this man, and therefore the law does not give me an equal right with him, and I need not be compelled to pay taxes." But that is not the case of the railroad companies.

The Supreme Court says that so far as railroad companies are concerned that you can make a segregation of them as a different class of property, for the purposes of taxation, and make different methods of assessment, and different laws so far as taxes are concerned.

MR. DAMRON: I would like to ask you the question, if the only point there is in those Kentucky cases was as to the classification of property under the State laws?

MR. LEZINSKY: Yes; that the property of railroads—railroad companies was classified into one separate class by itself, and was a class different from that of any other in the State.

Now, there is another view of the case, and that is this: That so far as the classification of property is concerned, the same law which provides for the assessment of mortgages to the mortgagee may classify them, and they may, according to the wisdom of the legislators, exempt a certain class of those mortgages from taxation, and that is just exactly what was done here. Now, let us look for a moment at the position in which both individuals and the railroad companies were in at the time that this Constitution was framed. It was desired by the framers of the Constitution, carrying out the wishes of the people, to make the mortgagees in mortgages

pay taxes upon whatever was covered by their mortgages, and to relieve the mortgagor, so far as that was concerned, from the payment of taxes. Therefore, they declared that so far as mortgages were concerned, a mortgage was deemed an interest in the property, and that interest should be assessed to the mortgagee and he should pay the taxes upon it. Now, when they came to consider one distinct class of these mortgages, different from any other mortgages that were held in the State, that is the mortgages of the railroad companies, what did they find? The basis of those mortgages were not notes, but bonds, and those bonds were scattered broadcast over the world, all over the United States and over Europe, and it was impossible to find who held those bonds or where any particular bond was held. And upon an inspection of these mortgages it was found that in every one of them there was a clause which provided as follows: "And the said party of the first part hereby agrees and covenants to and with the said parties of the second part, and their successors in said trust, that it will pay all ordinary and extraordinary taxes, assessments, and other public burdens and charges, which shall or may be imposed upon the property herein described and hereby mortgaged, and every part thereof; and the said parties of the second part, the survivor of them, or their successors in said trust, or any one or more of the holders of said bonds, may, in case of default of the said party of the first part in this behalf, pay and discharge the same, and any other lien or incumbrance upon said property, which may in any way, either in law or in equity, be or become in effect a charge or lien thereon, prior to these presents, or to which this mortgage may be subject or subordinate; and for all payments thus made the parties so making the same shall be allowed interest thereon at the rate of seven per cent per annum, and such payments, with the interest thereon, shall be and are hereby secured to them by these presents, and declared to be payable and collectible in the same sort of currency or money wherein they shall have been paid, and the same shall be payable by said party of the first part to said parties of the second part upon demand, in trust for the party or parties paying the same, and may be paid out of the proceeds of the sale of said property and franchises herein before provided."

Now, it is contended here, and contended in these cases, that if a mortgage was deemed an interest in the property, so far as these railroads or railroad companies are concerned, that they would not be required to pay the taxes that they have paid. But how very different is the truth? Let us take, for instance, the cases of the San Pablo and Tulare Railroad Company. There the corporation is simply assessed for \$900,000, without any deduction whatever; while their mortgage debt as covered by the mortgage records of this State is \$3,400,000. Therefore if their mortgage shall be presumed to be the value of their property, and the system—the same system could be applied to them that is applied to individuals—the State instead of collecting taxes only upon \$900,000, would at the very least collect taxes upon the face of their mortgages, \$3,400,000. And how could the State deduct \$3,400,000 from \$900,000? Does it not show that their property is assessed for less than one third of its value; for probably not more than one fourth of its value, if the mortgage placed upon it is any evidence of its value—of the value of the property? And so with the Central Pacific Railroad Company; so with the Southern Pacific Railroad Company, and so with the Northern Railway Company, and so with the California Pacific Railroad Company. I say that they do not pay taxes into the State which is upon one fourth of the value of their property. And I say that if they were assessed in the same way that individuals are assessed, or could be so assessed, that if the mort-

gage should be taken as the basis of the value of their property, and that value alone should simply be placed upon it, and the assessment made upon that basis, and that was assessed against the bonds, they would pay taxes in more than four times what they do pay. For under the conditions of the covenant of their mortgage, they would be required to pay that back or pay it themselves in the first place to those who held their bonds. And this State would receive from the railroad companies more than four times the taxes than it does if it received every dollar that was levied under the assessments made.

MR. DAMRON: Why is it that they are not assessed for more than \$900,000, if their property is mortgaged for \$3,400,000?

MR. DUNN: My recollection is that more than two years ago they had out some \$34,000,000 of bonds on the Southern Pacific of California. You know that is within the State; that it covered some of their land, the cars and some of the property—very nearly all the property assessed by the local Assessors, the depots, shops, stations, and grounds. Now I remember asking the question what their bonds were quoted for in the market. My recollection is that the answer was \$105 and \$106, and the highest assessment on that property has been \$17,000,000. I never believed that that property has been assessed for what it ought to have been.

MR. DAMRON: One piece of property in my county was mortgaged for \$40,000, at a certain time when our real estate was on wings and was assumed to be worth \$100,000. Last year the property was assessed for \$25,000. That was \$15,000 less than the mortgages on the property; and that is one of the strongest points that I have got in my constitutional amendment in favor of a mortgage tax.

MR. DUNN: Now, I presume you have read the railroad tax cases in 92 United States. The Illinois case. In that case they added together the value of the roadbed and the value of the rolling stock, and that covered the entire assessment. They said after the tangible property was assessed, the balance was the value of the franchise, and the United States Supreme Court not only decided in favor of the State in those cases, but declared this, that there never had been called to their attention a system of assessment which seemed as fair as that system of assessment did. Now, if that had been done in the case of the Southern Pacific Company—they were assessed this year on \$14,000,000, and the highest assessment was \$19,000,000—they would have been assessed for probably \$26,000,000.

MR. LEZINSKY: Now as to the contention that is made here that the railroad companies, if they had the same rule applied to them that has been applied to individuals, have paid now more than \$1,500,000 of taxes to the State than they should have paid. Does it not appear that this is all a tissue of misrepresentation, a tissue of falsehood, and based upon their own imagination? Because if they had been assessed the same as individuals, they would have come closer to paying taxes on \$3,400,000 in the San Pablo case than they would to have paid taxes on \$900,000. I say that in every one of these cases that the discrimination, if any, that has been made in the Constitution has acted in favor of the railroad companies, instead of acting against them.

MR. DAMRON: The Constitution provides that property shall only be assessed at its value, notwithstanding any mortgage that may be upon it greater than the value of the property itself. If the San Pablo Railroad is only worth \$900,000, that is all that you could assess it for, notwithstanding the fact that it is burdened with a mortgage of \$3,400,000.

MR. LEZINSKY: All of these mortgages were made prior to the Constitution, and all of them contained this clause which I have just read.

MR. SEAWELL: Whether they were made prior or afterwards, they can contain that clause. That is property which is assessed different from any other class of property—any class of property where the mortgage is distinctly on the property and is counted as an interest in the property.

MR. LEZINSKY: Now, a few words in response to the statement or argument of Mr. Cross made here on Monday night, and his remarks concerning a certain stipulation which had been presented to Mr. Haymond, the general solicitor of the railroad companies, for signature, to present a case to the United States Supreme Court, which shall pass upon this point.

I was present myself in the office when this stipulation was presented to Mr. Haymond, and the stipulation was in this effect. The stipulation was drawn originally by Mr. Johnson, the Attorney-General, who drew it just before he went to Washington, and it was presented without his being there to place his own construction upon it. But that stipulation was that a finding shall be had upon the question of the mortgage not being deducted from the assessment, and in parenthesis, there was inserted, "And findings upon all other points are waived." Now, my construction of Mr. Johnson's intention in putting that in, was, that it should be construed in this way: "And findings *in favor of the defendant* upon all other points is waived." That is, that these findings shall be in favor of the defendant upon this point, and the defendant waives findings upon all other points in its favor. If any other construction should have been placed on it, and the Circuit Court when it came to make up the findings, made a finding on that point and on no other, Mr. Johnson would not, I am certain, agree to any such findings.

I, myself, in that office, asked of Mr. Haymond this question: "Mr. Haymond, is this stipulation made in good faith? Do you propose to carry out this stipulation in good faith: to bring this case up before the Supreme Court of the United States upon this one point?" And his answer was: "There is no avowal of faith." Therefore, the gentlemen who were present there, myself among the number, were put upon our guard to that extent, because I asked him the question whether or not he intended to carry out this stipulation in good faith, and he did not dare to say he would, because he did not intend to. And we therefore immediately, and before Mr. Cross became aware of it, set about preparing a stipulation which would cover every point in issue. And that stipulation was presented to Mr. Haymond on Tuesday morning, and that stipulation I have brought with me, signed by him. Signed by him, I believe, because he could not depart from his statement and refuse to sign it. But, I still believe, if by any means within his power, or the power of his minions, he could prevent the decision of the Supreme Court of the United States upon this one point—mark me, gentlemen—that he will do it.

Now, as to a certain portion of the remarks made by Mr. Cross concerning this stipulation which was drawn up by the Attorney-General and presented to a man whom he believed would act in good faith concerning it, for this man always holds himself out as actuated by the highest principles. What does Mr. Cross say? He says: "These are the men who find fault with such a man as Attorney-General Marshall, because before these tax cases had been litigated at all he drew up and signed a stipulation which, in the light of subsequent events, proved defective. 'First cast the beam out of your own eye before you try to take the mote out of your brother's eye.' These men finding fault with the past Attorney-General because he signed a defective stipulation! Why, it would make a jackass laugh, if a jackass could know some law, to know of such people

doing such things." And I agree with him, that perhaps it would make a jackass laugh, but it would not make an intelligent man laugh, and I agree with him that the biggest jackass would laugh the loudest, and perhaps Mr. Cross would laugh the loudest.

I tell you, gentlemen, that in all these matters, so far as the present officials are concerned, there has been every endeavor to get this matter properly before the Courts and to have it properly determined. That at every step, instead of being met by the attorneys for the railroad company as they profess themselves to be, always ready to help in this matter, they are ever retarded. The railroad attorneys will make a stipulation, and then if by any means they can place a construction upon it different from the intention for which it is made, they will do it, so as to make the stipulation of no account.

Now, in conclusion, I have to thank the members of the committee for their kind indulgence in this hearing, and I submit that the report of this committee should be that the State has lost at least the cases of the Northern Railway Company, the San Pablo and Tulare Railroad Company, and the California Pacific Railroad Company, for the taxes of the years 1883 and 1884, by findings which were false and untrue, and, that were it not for these findings, that the Supreme Court of the United States would have decided the constitutional question involved in these cases, and that if judgment had been in favor of the State on the constitutional point, that judgment then would have been in favor of the plaintiff and against the defendant in those cases, instead of in favor of the defendant and against the plaintiff.

MR. DUNN: I want to say a few words. In Mr. Cross' statement the other night he says, "Now, the Board of Equalization had no guide but that law. They had to go by that law; they were sworn to obey the law. If they did not obey the law they were not acting within the law, and that is the law as laid down for them by the Legislature in what I will denominate the 'Filcher Bill,' a bill which was approved and praised by the Controller of the State, and adopted largely at his suggestion." I desire to say that there is not a word of truth in that statement. I never saw the Filcher Bill until it was about on its final passage in the Senate. That is about the substance of what Mr. Cross said also in another part of his argument; it was a repetition of that. At any rate, it was that the Attorney-General and Mr. Maslin and myself had prepared this bill and urged the Legislature to pass it. There is no truth in that statement. Mr. Filcher came to me and I asked him if I could make this statement. I was thinking of bringing him before this committee on that point, but I did not consider it necessary. He came to me in the session of 1883, and he said, "Mr. Dunn, I would like to have you look over this bill." Well, I had just come into office, and I knew nothing about these matters particularly. And he said, "I am very suspicious about this bill." And I said, "Why?" "Well," he says, "Mr. Haymond came to me and said he wondered how I had dropped on such a good bill as this, and I said, 'Why do you think so?' And he says, 'It is a good bill and I think it ought to pass, and the railroad people will pay their taxes under it if it passes.'" I looked it over, and I could not see any objection to it. Of course, this question about steamboats had not been decided at that time. That is all the knowledge that I had of that bill. I did not know who drew it up at that time. I understand since that Mr. Maslin had prepared the bill; whether he had any assistance I don't know.

The following documents relative to the matter under investigation were furnished to the committee as evidence, by Hon. John P. Dunn, State Controller:

CONTROLLER'S OFFICE,)
SACRAMENTO, June 18, 1886.)

To Hon. E. C. MARSHALL, Attorney-General:

DEAR SIR: When at San Diego, on the twelfth day of last month, on official duties with the State Board of Equalization, I saw in the San Francisco "Chronicle," of the eleventh, the decision of the U. S. Supreme Court on certain railroad tax cases. In that paper, I found a reported interview with yourself, touching that decision, in which you are represented as saying:

I was opposed to the new Constitution on the ground that the clause relating to railroads, in which there is a discrimination against mortgages, was fatal and in conflict with the fourteenth amendment of the Federal Constitution. As far as the effect of the decision is concerned, there is one result that I plainly see: it leaves no provision for the collection of taxes this year from the railroad company. The Board of Equalization, which will meet in August, will not have the right under this decision to levy an assessment on the railroad property, and I can see no way out of the difficulty except by the calling of an extra session of the Legislature to provide for the contingency. If that is not done no taxes for 1887 can be levied.

I was mortified and astounded that the Attorney-General of this State would deliberately assert that there is no law under which the railroads of the State can be assessed, as, in the decision rendered, the real issue at stake was not passed upon, and nothing involved in it except the shadowy issue of the assessment of fences. By this interview you have become the authority for the idea that the assessments for 1883, 1884, and 1885 have, like those of the cases decided, included the fences, and that the taxes for these years are thereby lost.

At the trial of certain cases for 1880, 1881, and 1882, had at the July term of the United States Circuit Court, in 1883, the Court found that the value of the fences had been included in the assessment by the former State Board. Knowing this, the present Board discussed the matter and purposely determined not to assess the fences, and did not assess them.

And knowing, of my own knowledge, that the fences have never been assessed by the present State Board, I determined to go to the records of the Court and ascertain what manner of findings had been permitted to be made whereby the taxes for these three years could be endangered, or had been lost.

To my amazement, I found that case 3668, against the Central Pacific, for the taxes of 1884, contained the following finding:

The State Board of Equalization, in making said pretended assessment of the said roadway of defendant, did willfully and designedly include in the valuation of said roadway the value of fences erected upon the land of coterminous proprietors.

On the margin was written these words: "No evidence offered to support this finding."

Then, over the above finding, is pasted the following finding:

The State Board of Equalization, in making the supposed assessment of said roadway of defendant, did knowingly and designedly include in the valuation of said roadway the value of fences erected upon the line between said roadway and the land of coterminous proprietors.

As stated in the original finding, "no testimony was introduced to sustain" the finding that the fences were assessed. The attorneys for the railroad knew it, and you knew it. Yet you permitted the findings to be so made upon the "paster" finding.

The same record as to fences was made in the case 3669, against the Southern Pacific, for 1884; and in addition I found the following finding:

The distance of four miles from the wharf at the end of the road of defendant in San Francisco, across the Bay of San Francisco to the wharf at the end of said defendant's road at Oakland, Alameda County, over which part of the bay freight is carried by said defendant upon steamers owned by said defendant and used for the purposes of said railroad, was assessed to said defendant as four miles of said road, at the same amount per mile as any other equal portion of said road, said four miles across said bay constituting four miles of the aggregate of six hundred and two and twenty-two one hundredths miles of said railroad assessed to said defendant.

This finding, like that relating to the assessment of fences, is not true, as the records of the assessment by the State Board of Equalization will prove.

It was stipulated between you and the attorneys for the railroad that the affidavit of the Clerk of the State Board of Equalization should be taken, as to the assessment of the fences, and the distance across the bay. That affidavit was not taken. Why was it not taken? I have no doubt that the attorneys for the railroad well knew that that testimony would show that the fences were *not* assessed, and that the distance across the bay was *not* assessed. And can it be possible that you, the Attorney-General of this State, did not know that fact? And if you did not know it, then why is it that you did not take the affidavit of the Clerk of the Board, as you agreed and stipulated to do? Had that testimony been taken, it would relieve these cases of the objection that controlled the decision of the United States Supreme Court in the cases already decided.

For several years these railroad companies have loudly proclaimed that the methods of assessment under our State Constitution were in violation of the Federal Constitution, and therefore void, and that they were anxious to have them heard and decided by the United States Supreme Court upon that issue. Yet, as evinced by their action but a short time since in the San Mateo case, supplemented by the false record made up in these cases, it must be evident to all that they are by every means within their power evading that very issue. And they have succeeded in evading it in these cases through the false findings you permitted them to impose upon the Court.

In the newspaper interview above quoted, you express it as your opinion that no taxes can be legally assessed against the railroads. From your standpoint, all the unpaid taxes against these railroads for 1883, 1884, and 1885 are void. They amount to \$1,233,000, besides costs and penalties. As I understand the purport of your language, you intend to abandon any attempts to enforce the collection of these taxes. Nineteen months since judgments against the State were entered in the United States Circuit Court for the taxes of 1883. You have taken no steps to appeal them. If this be not done within a very few months, the cases will be forever lost. You took an oath to support the Constitution of this State. Yet, you admit that assessments made under it are invalid. If you sincerely believe this, it is clearly your duty to step down and out of these cases, and permit attorneys, appointed under the law, who have faith in our Constitution, to take charge of them and prosecute them to final determination.

I feel that I should be derelict of my duty under the law if I failed to expose the transactions in these tax matters.

Finally, the honor of the State demands that the false—the scandalous records alluded to be expunged from the findings of the Court, so that the cases may be appealed and heard upon their merits. If it is your desire to win the cases, and if the railroad attorneys are really willing to have them decided upon their merits, this will be done.

Yours truly,

JOHN P. DUNN, Controller.

GOVERNOR STONEMAN'S REPLY.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT,)
SACRAMENTO, November 8, 1883.)

CREED HAYMOND, *Counsel for Central Pacific and Southern Pacific Railroad Companies:*

SIR: I have already acknowledged the receipt of your favor of the twentieth October, with memorandum, proposing to pay the taxes now due and delinquent from the Central Pacific and Southern Pacific Railroads, and leased lines, for the years 1880, 1881, and 1882, on the basis of the assessment for the year 1882. Immediately on the receipt of your communication and memorandum, I referred them to the Attorney-General to investigate and report on my power, or the power of any State officer, to accept a compromise of those taxes in the manner you propose; and also to the Controller for a statement and exhibit as to whether the taxes on the Central Pacific and Southern Pacific Railroad Companies were excessive, as claimed in your memorandum. The reports of those officers have just come to hand, which I herewith forward and make a part of this communication. The letter of the Attorney-General conclusively establishes the fact that neither myself nor any State officer—even if so disposed—has the right or power to accept any compromise from the companies you represent for the taxes now due from them, or to accept any less amount than the actual tax for the years 1880, 1881, and 1883, as fixed by the State Board of Equalization on the amount for which your companies were assessed for those years. The letter of the Controller also establishes, in my opinion, the fact that the valuations fixed by the State Board of Equalization on the property of your companies were not only not excessive, but that those valuations were not as great as the assessment of other species of property in this State. You must remember that our Constitution declares that all property in the State shall be assessed in “proportion to its value,” and the Political Code declares that “all taxable property must be assessed at its full cash value.” This is no doubt the rule adopted by the State Board of Equalization and County Assessors in ascertaining the valuations of property in this State. Applying this rule to all property assessed, I cannot see that the property of your companies has been excessively taxed, or taxed for more than its value.

But aside from the foregoing proposition, it occurs to me that it would be manifestly unjust, after property has been duly assessed by the lawful officers, the State and county tax levied thereon, after all the forms of law relating to the assessment and taxation of property have been fully complied with, for the State to accept any less amount than the taxes lawfully

due from any of its subjects. If the State has the right or power to compromise with your companies, and accept a less amount than the authorized officers have declared to be due from them, then any person in the State, having property taxed therein, would have the same right to fix the valuation on his property, and to claim that the State should accept from him a smaller amount of taxes than had been assessed and taxed against him.

Following this proposition to its legitimate conclusion, admitting that each and every person has the right to fix the valuation on his own property, and pay to the Tax Collector what he deems to be just, our government would soon end in a state of anarchy.

This State is a sovereign power, and in order to secure the respect due to that power must administer the laws justly and equally to all its subjects.

Yours respectfully, etc.,

GEORGE STONEMAN,
Governor.

THE ATTORNEY-GENERAL'S OPINION.

OFFICE OF THE ATTORNEY-GENERAL OF THE STATE OF CALIFORNIA, }
SACRAMENTO, November 8, 1883. }

Governor GEORGE STONEMAN:

DEAR SIR: The memorandum of a proposition for a compromise of the taxes due from the system of railroads in California controlled by the Central and Southern Pacific, which has been submitted to this office and the Controller, has been carefully considered. It is not necessary for me to discuss the policy of the proposed compromise. My opinion is that the power to make the compromise suggested, or to accept any sum less than that demanded in the suits now pending on appeal in the Supreme Court of the United States, does not exist in any or all of the departments of the State Government, except as a credit upon the judgment.

The report of the Controller, which I fully indorse, demonstrates that whether compared with other assessments of property or with the actual cash value of the railroad property in question, its assessments, even in the current year, are far too low. The power, into the exercise of which some of the counties have been seduced, and this office is now attempted to be led, would be fatal to revenue and civilization. If the amount of tax levied for State and county support is subject to reduction by State or county officers, or if the Courts themselves can give judgment for less than the lawful demand of the Government, our form of government is a failure.

I see no reason yet to fear the almost menacing attitude assumed by the railroads, if the people and their representatives are true to their duties.

Your Excellency knows that in your hands, with the coöperation of the coördinate branches of the government, the power exists to enforce all lawful obligations, and to promptly and effectually curb lawless power and overgrown arrogance.

Respectfully,

E. C. MARSHALL.

EXTRACT FROM CONTROLLER'S LETTER OF NOVEMBER 8
1883, TO HON. GEORGE STONEMAN, GOVERNOR OF THE
STATE OF CALIFORNIA.

The State Board of Equalization, for the year 1882, assessed the property of the Central Pacific Railroad Company at the sum of \$13,010,520; the Southern Pacific at the sum of \$8,226,135. Adopting as a rule of assessment of railroad property the method sanctioned and indorsed by the Supreme Court of the United States in the celebrated decision in the Illinois Railroad Tax Cases, wherein the method of ascertaining the value of railroad property in Illinois is declared to be to add to the amount of the indebtedness the value of the stock of the road, the decision, reported in the 92d United States Reports, pages 604 and 605, the Court says:

The statute of Illinois, and the rule adopted by the Board of Equalization under the power conferred by the clause we have just recited, may not be the wisest mode of doing complete justice in this difficult matter, but we confess we have, on the whole, seen no scheme which is better adapted to effect the purpose, so far as railroad corporations are concerned, of taxing at once all their property, and of making the tax just and equal in its relation to all other taxable property of the State. * * *

First—The market or fair cash-value of the shares of capital stock, and the market or fair cash value of the debt (excluding from such debt the indebtedness for current expenses), shall be combined or added together; and the aggregate amount, so ascertained, shall be taken and held to be the fair cash value of the capital stock, including the franchise, respectively, of such companies and associations.

Second—From the aggregate amount, ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property, respectively, of such companies and associations (such equalized or assessed valuation being taken, in each case as the same may be determined, by the equalization or assessment of property by this Board); and the amount remaining, in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise, which this Board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this State. * * *

It may be assumed for all practical purposes, and it is perhaps absolutely true, that every railroad company in Illinois has a bonded indebtedness secured by one or more mortgages. The parties who deal in such bonds are generally keen and far-sighted men, and most careful in their investments. Hence, the value which these securities hold in market is one of the truest *criteria*, as far as it goes, of the value of the road as a security for the payment of those bonds.

These mortgages are, however, liens on the road, and, taking precedence of the shares of the stockholders, may or may not affect that value to the exact amount of the aggregate debts. For all that goes to pay that debt, and its interest diminishes, *pro tanto*, the dividend of the shareholder and the value of his share.

It is therefore obvious, that, when you have ascertained the current cash value of the whole funded debt, and the current cash value of the entire number of shares, you have, by the action of those who above all others can best estimate it, ascertained the true value of the road, all its property, its capital stock, and its franchises; for these are all represented by the value of its bonded debt and of the shares of its capital stock.

The total amount of indebtedness of the Central Pacific Railroad Company, in 1882, as shown by the sworn statement of the President of the road, was \$88,855,934 36, and by the same authority the total number of shares of stock issued and paid up is given at 592,755. These shares, at their quoted market value of 89 $\frac{1}{2}$, for March 1, 1882, were worth \$53,125,666.

Therefore, taking the method stamped with the approval of the highest Court in the land as a basis, the Central Pacific Railroad, instead of being as it was assessed in 1882 at \$13,010,520, should have been assessed at over \$48,000,000, showing that instead of being assessed at its actual value, as required by law, it was really assessed at but about 27 per cent of its value. This value is found after deducting from the gross sum of the value of the stock and indebtedness the value of 5,940,000 acres of land at

\$2 50 per acre (most of which, however, is probably not assessed at all), and also \$5,000,000 worth of property in the State that should have been assessed for that amount by the local Assessors.

Accepting as true the sworn statement of Mr. Leland Stanford and Mr. E. H. Miller, Jr., made to the late Board of Railroad Commissioners, it must be apparent to the commonest mind that Mr. Haymond's claim for reduction has no foundation in merit to stand upon. Messrs. Stanford and Miller say that the total assets of the company, not including lands granted to the companies, are \$168,629,241 19. If \$168,629,241 19 be the true value of the Central Pacific Railroad, then the portion that lies within this State was assessed in 1882 for about 18 per cent of its actual value. On page 368 of the Railroad Commissioner's Report is found a sworn statement made by Mr. Charles Crocker and Mr. E. H. Miller, Jr., stating that the total income derived from all sources is \$25,389,257 35. On the following page the total expenses are given at \$14,579,428 42, leaving a net balance of \$10,809,828 93, which, as stated by them, is 8.37 per cent net income upon the amount of the indebtedness and capital stock of the road. If this road, which was assessed in 1882 at but \$13,010,520, had been assessed at the amount upon which it paid 8.37 per cent net income, the portion in this State would have been assessed for \$46,000,000.

Taking either position, the property of the Central Pacific Railroad was assessed not to exceed 28 per cent of its actual value—a rate of value less than one third of that placed upon other taxable property throughout the State.

It is needless to pursue this array of figures with regard to the Southern Pacific; it is sufficient to state that, by the sworn affidavit of the officers of this road, made to the Board of Railroad Commissioners, they received for the greater portion of their road a rental of \$3,000 per mile per year, which is 5 per cent on a value of \$60,000 per mile, or 10 per cent on a value of \$30,000 per mile, whereas it was assessed in 1882 at but \$11,512 97 per mile, which is less than 20 per cent upon \$60,000 per mile, and less than 39 per cent upon an assessment of \$30,000 per mile.

It is to be presumed that the railroad officials will not attempt to dispute the correctness of these figures, as they are their own sworn statement, and as it has, by these figures, been shown that the railroad property in question has in no case been assessed at more than 28 per cent of its actual value, it now only remains to show that other property throughout the State has been assessed at a rate relatively much greater.

The present State Board of Equalization, after a very careful examination of the values of property, in various counties throughout the State, found that the assessments averaged at least 70 per cent of the cash value. Many counties were assessed above this rate, and yet others were raised above it by the State Board. The assessments made by the local Assessors were, in many instances, raised 10, 15, or 20 per cent by the State Board, which made the differences yet greater, thus showing that it was the property of the counties, and not the property of the railroads, that was assessed "out of proportion to the valuations" placed upon the property of the Central and Southern Pacific Railroads and their branches.

Besides this the assessments upon mortgages in this State aggregated \$84,635,000, most of which were assessed by the Assessors in the counties at one hundred cents on the dollar; of these mortgages—

In San Francisco, \$26,902,936, were raised 15 per cent, making the assessments one hundred and fifteen cents on every dollar of value.

In Alameda, \$10,432,516, raised 20 per cent.

In Monterey, \$635,965, raised 15 per cent.

In San Mateo, \$803,190, raised 15 per cent.

In Los Angeles, \$1,572,486, raised 15 per cent.

In San Joaquin, \$4,514,029, raised 15 per cent.

In Yolo, \$1,746,000, raised 20 per cent.

In Sacramento, \$2,814,610, raised 15 per cent.

In Marin, \$1,522,760, raised 20 per cent.

In Sutter, \$947,016, raised 20 per cent.

In Solano, \$2,048,749, raised 15 per cent.

In Tulare, \$734,653, raised 10 per cent.

In Kern, \$130,000, raised 10 per cent.

In Contra Costa, \$1,017,855, raised 20 per cent.

In Santa Clara, \$3,332,455, raised 10 per cent.

In Yuba, \$444,920, raised 10 per cent.

In Napa, \$1,628,164, raised 10 per cent.

In Santa Barbara, \$468,575, raised 20 per cent.

In Tehama, \$910,000, raised 10 per cent.

In San Benito, \$651,420, raised 10 per cent.

In other words, mortgages representing \$16,144,722, face value, were raised 20 per cent above their true value; those representing \$39,291,965 were raised 15 per cent above their value, and the remaining counties, representing \$7,831,612, were raised 10 per cent above their value.

Besides this, there were this year assessed \$29,531,160 in money, solvent credits, and other securities, at full value. Again, the property of Spring Valley Water Company, in San Francisco, was assessed for the fiscal year 1881-82 at \$5,740,770, an amount but \$2,485,365 less than the assessment made against the property of the Southern Pacific Railroad for 1882. And the San Francisco Gaslight Company was assessed for the same time at \$6,653,250, which is but \$1,572,865 less than the assessment made against the same railroad company for the year 1882.

It is therefore seen that money, solvent credits, and other securities, are assessed at their face value, mortgages mainly so, or above it, and other classes of property at from seventy cents on the dollar to amounts exceeding that figure, whilst the property of the railroads represented by Mr. Haymond is assessed not to exceed twenty-eight cents on the dollar. Yet these people assert that their property was assessed "excessively, and out of proportion to the valuations placed upon other property in this State."

If it be granted that the amount of the mortgages upon railroad property should, as they insist, be deducted from the value of their property, as shown by themselves, the amount for which they should be assessed would yet be much higher than the amount of the assessment of which they complain.

The mass of the taxpayers throughout the State, thousands of them of limited means, are required by law to pay the taxes upon their property before the month of April of each year, under penalty of sale, and, in order to recover it are compelled to pay a penalty of 25 or 50 per cent upon the amount due and for which the property was sold. Such conditions have not obtained as against these railroads, which now owe to the State the taxes due for four years. It may therefore be said with reason that these railroads, instead of being discriminated against, have been treated with marked leniency by the State.

It is therefore time, in my judgment, to determine whether the methods of assessment that shall prevail, and values placed upon property by competent authority, shall be those created by the laws of the State or by the dictation of corporations that receive all of the benefits, yet contribute little to the support of the government; and also to determine forever the ques-

tion as to whether or not flimsy pretense, under the panoply of wealth, shall be permitted longer to bid defiance to the power through whose clemency they exist.

Having thus shown that the property of the aforesaid railroads was assessed at much less than its actual value, and far less than the assessment upon other classes of property throughout the State, it is therefore plain that they have no right in equity to ask the State to accept their proposition. After diligent research, I have been unable to find any law which, either in terms or by implication, would warrant this office in accepting less than the full amount of taxes due. Hence, finding that there is neither law nor equity to sanction a reduction, there is but one conclusion at which I can arrive, and that is, that, in so far as this office is concerned, this proposition cannot be entertained.

Respectfully submitted.

JOHN P. DUNN,
Controller.

RAILROAD TAXES.

For eight years there has been, and now is, a heavy deficiency in the receipts to the General Fund, School Fund, and Interest and Sinking Fund, owing to the refusal of the Central and Southern Pacific and other railroad companies to pay the taxes levied upon them by the law.

The assessed value of all the taxable property in the State for 1880 was \$666,202,674, of which the assessment against all railroads amounted to \$31,174,120, being 4.68 per cent of the whole assessment.

In 1881, after equalization by the State Board, the assessment was \$658,691,059; and the assessment of railroads was \$34,829,668, being 5.29 per cent of the whole amount.

For 1882 the assessed value of the whole property was fixed at \$607,472,762, whilst the assessment upon railroads was \$27,602,313, being 4.54 per cent of the whole.

In 1883 the entire assessment of property amounted to \$764,763,559, whilst the value put upon railroads operated in more than one county aggregated \$40,017,000, which is 5.23 per cent of the whole.

For 1884 the total assessment of property amounted to \$821,604,703; assessment of railroads, \$50,746,500, which is 6.1 per cent of the whole.

For 1885 the total assessment of property was \$859,779,423, whilst the total for railroads was \$49,035,750, which is 5.7 per cent of the whole.

For 1886 the total assessment of property was \$817,445,729; assessment of railroads, \$48,051,100, which is 5.8 per cent of the whole.

For 1887 the total assessment of property was \$956,740,805; railroads, \$47,673,453, which is 4.9 per cent of the whole.

Recapitulating, these assessments for the several years are as follows:

YEARS.	Total Assessments.	Railroad Assessments.
For 1880.....	\$666,202,674	\$31,174,141
For 1881.....	658,691,059	34,829,668
For 1882.....	607,472,762	27,602,313
For 1883.....	764,763,559	40,017,000
For 1884.....	821,604,703	50,746,500
For 1885.....	859,779,423	49,033,767
For 1886.....	817,445,729	48,051,100
For 1887.....	956,740,805	47,673,453

The total valuation upon the Central Pacific, the Southern Pacific, and branches, the State rate, and the State tax for 1880, 1881, 1882, 1883, 1884, 1885, 1886, and 1887, are presented here :

YEARS.	Valuation.	Rate on each \$100.	Total Tax.
For 1880.....	\$28,338,265 66	64 cents.	\$181,364 90
For 1881.....	32,429,519 00	65.5 cents.	212,413 34
For 1882.....	25,476,751 00	59.6 cents.	151,871 53
For 1883.....	36,644,000 00	49.7 cents.	182,120 07
For 1884.....	47,481,000 00	45.2 cents.	214,616 38
For 1885.....	45,417,250 00	54.4 cents.	247,069 84
For 1886.....	43,752,000 00	56 cents.	245,011 20
For 1887.....	43,549,099 00	60.8 cents.	264,778 52

The following tables show the valuation of each railroad in the State, as fixed by the State Board of Equalization, for the years 1880, 1881, 1882, 1883, 1884, 1885, 1886, and 1887:

1880.

NAMES OF RAILROADS.	Total Assessment.
Amador Branch.....	\$283,500 00
California Northern.....	197,003 00
California Pacific.....	1,801,300 00
Central Pacific.....	12,239,456 00
Northern Railway.....	1,492,758 00
Sacramento and Placerville.....	539,098 50
San Francisco and North Pacific.....	1,274,300 00
San Pablo and Tulare.....	492,800 00
Southern Pacific.....	10,483,518 00
Stockton and Copperopolis.....	597,632 00
Vaca Valley and Clear Lake.....	249,725 00
Nevada County Narrow Gauge.....	226,230 00
North Pacific Coast.....	633,517 25
Santa Cruz.....	158,478 16
South Pacific Coast.....	504,825 30
Total.....	\$31,174,141 21

1881.

NAMES OF RAILROADS.	Total Assessment.
Amador Branch	\$275,400 00
California Northern	159,053 00
California Pacific	1,856,250 00
Central Pacific	15,955,500 00
Northern Railway	1,543,050 00
Sacramento and Placerville	485,018 00
San Francisco and North Pacific	1,302,000 00
San Pablo and Tulare	552,000 00
Southern Pacific	11,739,915 00
Stockton and Copperopolis	580,190 00
Vaca Valley and Clear Lake	246,925 00
Nevada County Narrow Gauge	202,500 00
North Pacific Coast	419,451 00
Santa Cruz	95,241 00
South Pacific Coast	317,145 00
Total	\$34,829,668 00

1882.

NAMES OF RAILROADS.	Total Assessment.
Amador Branch	\$162,027 00
California Northern	119,276 00
California Pacific	1,462,500 00
Central Pacific	13,010,520 00
Northern Railway	1,143,000 00
Sacramento and Placerville	291,048 00
San Francisco and North Pacific	1,110,000 00
San Pablo and Tulare	460,000 00
Southern Pacific	8,226,135 00
Stockton and Copperopolis	379,355 00
Vaca Valley and Clear Lake	246,925 00
Nevada County Narrow Gauge	168,750 00
North Pacific Coast	419,451 00
Santa Cruz	95,241 00
South Pacific Coast	308,085 00
Total	\$27,602,313 00

1883.

NAMES OF RAILROADS.	Total Assessment.
Amador Branch	\$164,000 00
California Northern	118,000 00
California Pacific	1,800,000 00
Central Pacific	18,000,000 00
Northern Railway	2,000,000 00
Sacramento and Placerville	290,000 00
San Francisco and North Pacific	1,115,000 00
San Pablo and Tulare	700,000 00
Southern Pacific	13,000,000 00
Stockton and Copperopolis	400,000 00
Vaca Valley and Clear Lake	190,000 00
Nevada County Narrow Gauge	150,000 00
North Pacific Coast	425,000 00
Santa Cruz	100,000 00
South Pacific Coast	500,000 00
San Joaquin and Sierra Nevada	125,000 00
California Southern	600,000 00
Pacific Coast Railway	340,000 00
Total	\$40,017,000 00

1884.

NAMES OF RAILROADS.	Total Assessment.
Amador Branch	\$175,500 00
California Pacific	2,000,000 00
California Southern	150,000 00
Central Pacific	24,000,000 00
Northern California	95,000 00
Northern Railway	2,300,000 00
Santa Cruz	150,000 00
Sacramento and Placerville	291,000 00
San Francisco and North Pacific	1,300,000 00
San Pablo and Tulare	950,000 00
Southern Pacific	17,000,000 00
Stockton and Copperopolis	425,000 00
Vaca Valley and Clear Lake	190,000 00
Carson and Colorado	215,000 00
Nevada County Narrow Gauge	115,000 00
South Pacific Coast	500,000 00
North Pacific Coast	425,000 00
Pacific Coast Railway	340,000 00
San Joaquin and Sierra Nevada	125,000 00
Total	\$50,746,500 00

1885.

NAMES OF RAILROADS.	Total Assessment.
Amador Branch	\$162,000 00
California Pacific	2,000,000 00
California Southern	450,000 00
Central Pacific	22,000,000 00
Northern California	100,000 00
Northern Railway	2,300,000 00
Pajaro and Santa Cruz	150,000 00
Sacramento and Placerville	315,250 00
San Francisco and North Pacific	1,300,000 00
San Pablo and Tulare	900,000 00
Stockton and Copperopolis	400,000 00
Southern Pacific	17,000,000 00
Vaca Valley and Clear Lake	190,000 00
Carson and Colorado	215,000 00
Nevada and California	13,500 00
Nevada County Narrow Gauge	115,000 00
North Pacific Coast	390,000 00
Pacific Coast Railway	340,000 00
San Joaquin and Sierra Nevada	145,000 00
South Pacific Coast	550,000 00
Total	\$49,035,750 00

NAMES OF RAILROADS.	Total Assessment.
Amador Branch Railroad	\$162,000 00
California Pacific Railroad	2,000,000 00
California Southern Railroad	1,264,800 00
Central Pacific Railroad	20,000,000 00
Northern California Railroad	100,000 00
Northern Railway	2,700,000 00
Pajaro and Santa Cruz Railroad	150,000 00
Sacramento and Placerville Railroad	300,000 00
San Francisco and North Pacific Railroad	1,200,000 00
San Pablo and Tulare Railroad	900,000 00
Stockton and Copperopolis Railroad	350,000 00
Southern Pacific Railroad	17,000,000 00
Vaca Valley and Clear Lake Railroad	190,000 00
Carson and Colorado Railroad	215,000 00
Nevada and California Railroad	13,500 00
Nevada County Narrow Gauge Railroad	115,000 00
North Pacific Coast Railroad	350,000 00
Pacific Coast Railway	300,000 00
San Joaquin and Sierra Nevada Railroad	160,800 00
South Pacific Coast Railroad	500,000 00
Atlantic and Pacific Railroad	50,000 00
Pullman Palace Car Company	30,000 00
Total	\$48,051,100 00

1887.

NAMES OF RAILROADS.	Total Assessment.
Amador Branch Railroad	\$162,000 00
California Pacific Railroad	2,500,000 00
California Southern Railroad	1,400,000 00
Central Pacific Railroad	18,000,000 00
Northern California Railroad	110,000 00
Northern Railway	3,000,000 00
Pajaro and Santa Cruz Railroad	150,000 00
Sacramento and Placerville Railroad	300,000 00
San Francisco and North Pacific Railroad	1,400,000 00
San Pablo and Tulare Railroad	900,000 00
Southern Pacific Railroad	16,500,000 00
Southern Pacific Branch Railroad	350,000 00
Stockton and Copperopolis Railroad	350,000 00
Vaca Valley and Clear Lake Railroad	200,000 00
Carson and Colorado Railroad	230,000 00
Nevada and California Railroad	13,500 00
Nevada County Narrow Gauge Railroad	115,000 00
North Pacific Coast Railroad	350,000 00
Pacific Coast Railway	340,000 00
San Joaquin and Sierra Nevada Railroad	160,000 00
South Pacific Coast Railroad	750,000 00
Atlantic and Pacific Railroad	100,000 00
Southern Pacific Company	227,099 00
Pullman Palace Car Company	69,854 00
Total	\$47,677,453 00

For all these years, the Central and Southern Pacific Railroad Companies, and certain branches controlled by them, have refused, and still refuse, to pay the taxes levied upon them by law, and the very large amounts thus not collected have caused serious disarrangement to the finances of the State, and the several counties through which they run. The total amount

due from these companies, representing the face of the tax from 1883 to 1887, inclusive, aggregates \$2,547,700 61.

This statement omits the amount due for 1880, 1881, and 1882, as this office has not the data for ascertaining the exact unpaid amounts.

Actions were brought to recover the delinquent taxes for all these years, except for 1887. But for this latter year, after advising with the Attorney-General, none were begun. The history of these railroad tax suits is one presenting deceit, misrepresentation, and false and fraudulent records upon the part of the Central and Southern Pacific Companies. In the cases of 1884 against these companies, the United States Circuit Court findings show that the State Board of Equalization assessed to the railroads the fences along the lines of the roads, and also the distance across the Bay of San Francisco, a distance of four miles, as four miles of the railroads. No testimony was introduced on the trial to prove any such assessments. The State Board of Equalization did *not assess* either the fences or the distance across the Bay of San Francisco; and yet, in the face of this fact, the then Attorney-General permitted this record to be made a part of the findings of the Court. It is a significant fact, in this connection, that the decision rendered against the State by the Supreme Court of the United States in a similar railroad tax case, was based upon the fact that the findings showed that the (former) State Board of Equalization had assessed the fences along the lines of the roads—thus putting these cases in the identical condition of those already decided against the State by the Supreme Court of the United States, and rendering it worse than useless to appeal them.

In a letter addressed to the Attorney-General, on the eighteenth day of June, 1886, I called his especial attention to the false condition of the record. This false and fraudulent record was, by him, allowed to remain as part of the record, without any attempt on his part, so far as I am aware, to correct it, even after his attention had been called to it by myself in a public communication. This false record was presented to the United States Supreme Court as a true statement of facts in the case. Of course, in view of the Supreme Court's previous decision, there could be but one result to an issue so presented, and the State lost her cases.

In my last report I predicted this result, in the following language:

The false findings in the United States Circuit Court must be corrected, or the State will lose every cent of the taxes shown to be due. This office is powerless to accomplish it. The attorney employed by this office, Hon. D. M. Delmas, is powerless to accomplish it, as the United States Circuit Court recognizes only the Attorney-General as clothed with the right to control the cases. Can it be that a great State vested with all the attributes of inherent power and sovereignty can be thus pillaged of her rights without the possibility of undoing the outrage?

It is strange that the great State of California has been debarred by these companies from presenting to the Supreme Court of the United States for adjudication a correct and truthful record of her railroad assessments.

The present head of the law department of these railroad companies has time after time given out publicly the statement that he was only too anxious to submit these cases on their merits to the Court of last resort; and, yet, the department over which he presides has resorted to the use of false and fraudulent records, to mislead the Court and *prevent* the cases from being heard on their merits.

The effect of this successful legal chicanery makes itself felt severely in the finances of the State and the several interested counties, the total amount due for all the named years being the large sum of \$2,547,700 61. Of this amount, there is due to the State the sum of \$946,765 81, of which

\$556,615 44 is due to the General Fund; \$316,199 59 to the School Fund; \$69,778 80 to the Interest and Sinking Fund; and \$4,171 98 to the State University Fund.

Now let us consider the condition of these funds under their depleted situation growing out of the refusal of these railroad companies to pay the tribute justly due from them to the State. As shown by the foregoing statement, they owe to the General Fund the sum of \$556,615 44. Had this tax been paid as all other parties in the State are compelled to pay, all demands against this fund would be payable at sight, and creditors of the State, who are now compelled to wait for months for their money, would receive it on presentation of their Controller's warrants.

As to the School Fund, there has for some time been loud complaint over the fact that the money paid by the State to the counties to aid in the support of public schools is inadequate. Teachers are compelled to submit to reductions of salaries and to wait for months for what is paid them, and various other matters appertaining to the successful running of the public schools has been more or less interfered with. The large amount due this fund from these railroad companies accounts considerably to the people for this deplorable condition of their educational affairs. So, too, the amount due from these same sources to the Interest and Sinking Fund prevents the payment of State bonds now payable. In like manner, the State University Fund will suffer if these companies persist in their present unjustifiable methods. Likewise, the same censurable policy practiced against the State has been enacted against the several counties traversed by these roads. Notably is this true as to Placer, Tehama, Shasta, Nevada, San Joaquin, Stanislaus, Merced, Fresno, Tulare, Sacramento, Kern, Los Angeles, San Bernardino, San Diego, Alameda, Santa Clara, and other counties. Hence, the funds of each of these counties have suffered, as have the State funds, from the same cause. And the taxpayers of these counties have thus been compelled to pay, first, their own taxes, and second, the taxes levied upon the railroads, but which *they* refused to pay.

I recommend that the Legislature pass an Act requiring the State Board of Equalization to reassess railroads delinquent for taxes for the years since 1880, and that the County Auditors and Treasurers be required, on the settlement with said railroad companies, under this reassessment, to credit them with any partial payments already made for those years.

I earnestly and urgently recommend that the law for the taxation of railroads be so amended as that the same penalty for delinquency of other property shall attach to delinquent railroads, and that that class of property be sold for delinquent taxes as all other classes of property are sold, and that like penalties of redemption be provided. The heavy hand of the law is laid upon the house and home of the farmer, and the owner of city and town homesteads, for delinquency, and the property is sold at tax sale; and is there any good reason why railroad property should be exempted from the severe penalties imposed upon other classes of property for delinquency? Is it of loftier or holier character than the homes and firesides of families? Let the certainty be established that legal clouds will fall upon the title to this class of property through sale on account of delinquency, and that redemption profits such as accrue to purchasers of other kinds of property will ensue, and railroad delinquency and obstinacy will end together.

OFFICE OF THE CONTROLLER OF STATE,)
SACRAMENTO, CALIFORNIA, February 28, 1889.)

To the Assembly of the State of California:

In conformity with the resolution adopted by your honorable body February 12, 1889, which reads as follows:

Resolved, That the Controller of State be and he is hereby required to furnish the Assembly with the following information, to wit:

First—The whole amount of taxes delinquent upon railroads assessed by the State Board of Equalization for the years 1883, 1884, 1885, 1886, and 1887.

Second—The proportion of said delinquent taxes due the several State funds, and the amount due each county.

Third—The amount which, if the total delinquency were paid, would, upon the basis of the school census for the present year, and the rates levied for school purposes in the several counties, be available for school purposes in each county.

I have the honor to make the following statement:

Replying to the inquiry contained in subdivision first of the resolution, the amounts due for the several years are as follows:

For the year 1883.....	\$222,251 33
For the year 1884.....	323,852 49
For the year 1885.....	720,718 11
For the year 1886.....	648,957 05
For the year 1887.....	648,541 38
Total.....	\$2,564,320 36

Replying to the inquiry contained in the second subdivision, the amount of such delinquent taxes due the several State funds, and the amount due each county, are as follows:

Due the State General Fund.....	\$538,234 64
Due the State School Fund.....	302,126 79
Due the State Interest and Sinking Fund	66,547 80
Due the State University Fund.....	4,171 98
Due Alameda County.....	73,014 32
Due Butte County.....	53,569 97
Due Calaveras County.....	47 39
Due Colusa County.....	33,482 80
Due Contra Costa County.....	31,611 74
Due Fresno County.....	90,132 57
Due Kern County.....	126,519 95
Due Los Angeles County.....	89,210 63
Due Marin County.....	2,441 33
Due Merced County.....	51,339 70
Due Monterey County.....	35,898 75
Due Napa County.....	33,061 08
Due Nevada County.....	65,670 56
Due Placer County.....	157,170 05
Due Sacramento County.....	38,034 38
Due San Benito County.....	11,230 88
Due San Bernardino County.....	141,336 46
Due San Diego County.....	120,681 65
Due San Francisco County.....	9,092 98
Due San Joaquin County.....	38,231 98
Due San Mateo County.....	16,010 35
Due San Luis Obispo County.....	934 14
Due Santa Clara County.....	34,714 47
Due Santa Cruz County.....	4,097 33
Due Shasta County.....	119,925 61
Due Sierra County.....	5,646 97
Due Siskiyou County.....	13,104 03
Due Solano County.....	33,778 21
Due Sonoma County.....	776 45
Due Stanislaus County.....	18,062 73
Due Sutter County.....	7,477 29
Due Tehama County.....	79,429 43
Due Tulare County.....	59,085 79
Due Yolo County.....	25,911 42
Due Yuba County.....	32,505 76
Total.....	\$2,564,320 36

Replying to subdivision third of the resolution, the amounts levied for school purposes by the Boards of Supervisors of the various counties, the proportion of the State school taxes due for the several years, \$302,126 79, which, if paid, would reach the various County Treasuries and be available for the support of the common schools, according to the school census of the present year, together with the total amount of such delinquent railroad taxes levied for school purposes, are set forth in the following table:

COUNTY.	Amount of De- linquent Taxes on Railroads Levied by Counties for the Sup- port of Schools.	Amount of Delinquent State School Taxes Due upon Railroads which, if Paid, would be Apportioned to each County.	Total Due each County for School Purposes on Account of Delinquent Rail- road Taxes.
Alameda	\$12,460 60	\$23,718 91	\$36,179 51
Alpine		96 05	96 05
Amador		3,405 49	3,405 49
Butte	11,138 30	4,675 43	15,813 73
Calaveras	7 00	2,638 16	2,645 16
Colusa	6,409 31	3,640 04	10,049 35
Contra Costa	6,756 12	3,745 03	10,501 15
Del Norte		567 40	567 40
El Dorado		2,539 88	2,539 88
Fresno	20,747 12	6,546 27	27,293 39
Humboldt		6,249 17	6,249 17
Inyo		666 80	666 80
Kern	19,108 94	1,817 23	20,926 17
Lake		1,992 58	1,992 58
Lassen		1,110 22	1,110 22
Los Angeles	14,009 13	30,436 06	44,445 19
Marin	344 75	2,501 10	2,905 85
Mariposa		1,100 17	1,100 17
Mendocino		4,711 17	4,711 17
Merced	7,337 94	1,754 68	9,092 62
Modoc		1,600 55	1,600 55
Mono		355 18	355 18
Monterey	8,677 51	4,864 19	13,541 70
Napa	4,424 84	3,978 47	8,403 31
Nevada	11,773 50	5,270 74	17,044 24
Placer	25,349 49	3,274 81	28,624 30
Plumas		1,166 06	1,166 06
Sacramento	5,423 85	9,609 98	15,033 83
San Benito	2,869 11	2,176 88	5,045 99
San Bernardino	33,777 15	6,570 84	40,347 99
San Diego	26,856 95	9,016 89	35,873 84
San Francisco	970 82	66,694 61	67,665 43
San Joaquin	9,921 19	7,038 83	16,960 02
San Luis Obispo	211 10	4,634 10	4,845 20
San Mateo	2,723 87	2,877 19	5,601 06
Santa Barbara		4,637 45	4,637 45
Santa Clara	4,922 71	12,575 40	17,498 11
Santa Cruz	830 93	4,868 65	5,699 58
Shasta	34,389 68	3,642 28	38,031 96
Sierra	1,118 72	1,231 96	2,350 68
Siskiyou	4,173 25	2,739 80	6,913 05
Solano	6,661 31	5,056 30	11,717 64
Sonoma	164 32	9,441 32	9,605 64
Stanislaus	3,278 68	2,680 61	5,959 29
Sutter	1,837 33	1,477 68	3,315 01
Tehama	14,784 32	2,986 64	17,770 96
Trinity		842 16	842 16
Tulare	15,032 50	6,473 67	21,506 17
Tuolumne		1,769 20	1,769 20
Ventura		2,551 04	2,551 04
Yolo	4,415 41	3,597 60	8,013 04
Yuba	3,292 87	2,453 87	5,746 74
Totals	\$326,200 68	\$302,126 79	\$628,327 47

The assessments upon which these taxes are due were made by the State Board of Equalization, such assessments being for the franchise, roadway, roadbed, rails, and rolling stock of railroads operated in more than one county of the State.

Of the railroad companies delinquent for taxes for the years 1883 to 1887, inclusive, the Central Pacific, Southern Pacific, California Pacific, Northern Railway, and the San Pablo and Tulare, and the Stockton and Copperopolis Railroads each paid sixty per cent of the taxes levied against them for the year 1883, leaving the amount shown in the statement as still due from them for that year.

For the year 1884, the Stockton and Copperopolis Railroad Company paid its taxes in full when they became due and payable, and has also paid the taxes due for each subsequent year. The other companies named above paid about fifty-one per cent of the taxes levied against them for the year 1884, but for the years 1885, 1886, and 1887 they have paid nothing. The North Pacific Coast Railroad Company is delinquent for the sum of \$5,339 38 as taxes for the year 1885. The South Pacific Coast Railroad Company is delinquent for the sum of \$10,178 48 as taxes for the year 1887. The Pullman Palace Car Company is delinquent for the sum of \$1,102 18 as taxes for the year 1887, upon the rolling stock of the company used on the Central Pacific and other railroads.

From the above it will be seen that the entire delinquency, except the amounts due from the North Pacific Coast Railroad Company and the Pullman Palace Car Company, is chargeable to the system of roads operated by the Southern Pacific Company.

Respectfully submitted.

JOHN P. DUNN, Controller.



IN THE MATTER OF CONTEST OF ELECTION

OF

JOHN J. SULLIVAN, Contestant, vs. W. O. BANKS, Respondent.

City and County of San Francisco, State of California.

Testimony taken before Justices of the Peace H. J. Stafford
and J. I. Boland.

THOS. R. KNOX, Official Stenographer.

TESTIMONY.

SAN FRANCISCO, CALIFORNIA,)
SATURDAY, December 31, 1888—10 o'clock A. M. }

This matter came on regularly for hearing, in accordance with the notice, before H. L. Joachimson and J. I. Boland, Justices of the Peace, in the Court-room of Justice H. L. Joachimson. Present: Justices H. L. Joachimson and J. I. Boland; the contestant, John J. Sullivan, and Andrew J. Clunie, counsel for contestant; W. O. Banks, respondent, and M. A. Dorn, counsel for respondent, and Thomas R. Knox, shorthand reporter.

Counsel for contestant objected to Justice Joachimson participating in the taking of the testimony, on the ground that he had not been named in his original notice as one of the Justices. Deputy County Clerk L. J. Welch was sworn, and testified that Justice Stafford had come to the County Clerk after the original notice was made and announced that he could not attend to the matter, and that some other Justice would have to be substituted; that the County Clerk then substituted the name of Justice Joachimson. Counsel for contestant still objected to Justice Joachimson acting, and Justice Stafford was called into the Court-room, when counsel for respondent objected to Justice Stafford participating in this case in any manner whatsoever, on the ground that the case was not before Justice Stafford, and further objected to any continuance of the case, on the ground that he was ready to proceed and that there had been no showing authorizing the contestant to demand a continuance (Justice Stafford having announced that he was unable to proceed with the case to-day). Judge Boland then announced that he would hold that the original notice, having Justice Stafford's name in it, he would hold that Justice Stafford was the one to act, but that the County Clerk could now substitute another Justice, the case now being called for the purpose of proceeding.

Justices Stafford and Boland finally continued the matter until two o'clock P. M., and counsel for respondent then objected to the order of continuance.

AFTERNOON SESSION—2 o'clock.

[Before Justices Stafford and Boland, in Justice Boland's Court-room.]

JUSTICE BOLAND: Justice Stafford and I have decided that this matter is before us as originally assigned, and that the subsequent notice is of no effect.

MR. DORN: We will note an exception. I will state to your honors that we have Mr. Knox here, the shorthand reporter, and we might agree on him as the reporter, in order that your honors might certify to the testimony.

MR. CLUNIE: Mr. Sullivan has arranged to have another reporter here. The other side have brought Mr. Knox here, and while I have no objection

to his reporting it, Mr. Sullivan secured Mr. Potter, and I would suggest that Mr. Potter be appointed by your honors the official reporter.

MR. DORN: Then each side can furnish its own reporter, and Mr. Potter can take down the testimony for the contestant, and Mr. Knox can take it down for the respondent. Before proceeding in the case at all, or any steps being taken, we interpose an objection to the testimony being taken before your honors, on the ground that we have never received any notice directing us to appear before Justices Stafford and Boland. The only notice we received was to appear before Justice Boland and Justice Joachimson, and before them we were prepared to appear.

MR. CLUNIE: When the matter comes up again I can reply to that if necessary. When I delivered this original notice to the Sheriff, it was in my handwriting, and there it was specified Justices Stafford and Boland.

JUSTICE STAFFORD: Let it appear of record that the attorneys for the respective parties were present at the time the ruling was made.

MR. DORN: Yes, sir. And I want it to appear that I was present, and that I objected to the proceeding going on, and to any orders being made.

MR. CLUNIE: I will ask that that go over until our next meeting.

MR. DORN: Before either of your honors makes any order you must take jurisdiction, and I must make that objection now. I therefore make the preliminary objection to the jurisdiction of your honors, that we have not been cited to appear before you, and whether it was the negligence of the Sheriff, of the County Clerk, or whoever it may have been, the fact appears that we were cited to appear before Justices Boland and Joachimson.

MR. CLUNIE: I want to bring the Sheriff in here, and Mr. Welch, the Deputy County Clerk.

MR. BOLAND: We have decided that we have jurisdiction; that the matter was originally assigned to us, and that the subsequent assignment by the County Clerk was of no force or effect, and that the matter is still before Judge Stafford and myself. The objection of counsel for respondent is overruled.

MR. DORN: We will note an exception. I ask that an entry be made right now of our appearance in the case, and in all this proceeding we preserve this objection, and we reserve that right.

MR. CLUNIE: I object to the Court making any such order as that. I shall object to Mr. Dorn cross-examining any witnesses unless he appears as attorney.

MR. DORN: The objection I desire is that we appear in this case, and that we reserve at all times the right to object to the jurisdiction of this Court.

MR. CLUNIE: The Court can make no ruling on that.

JUSTICE BOLAND: No, sir.

[Here the further hearing was continued until Wednesday, January 3, 1889, at 10 o'clock A. M.]

SECOND DAY.

WEDNESDAY, January 3, 1889. }
10 o'clock A. M. }

Present: Justices J. H. Stafford and J. I. Boland, contestant and respondent, with their respective counsel, and Mr. Knox, shorthand reporter.

MR. CLUNIE: I would state to your honors before proceeding, that after

consultation with Mr. Sullivan we have agreed that if your honors will swear Mr. Knox in as official reporter we will be satisfied with him. We want him sworn in as official reporter for your honors.

MR. DORN: That is perfectly satisfactory to us.

[Mr. Thomas R. Knox was here duly sworn as the official reporter to take down the testimony and proceedings and transcribe the same.]

MR. CLUNIE: Have your honors the statement of contest here? I want to show by Mr. Welch that the statement was issued as your honors see it, and I want to show by Mr. Banks that that notice was not in the condition when he received it as when it was sent. I want that testimony in. I will call Mr. Sullivan as a witness on that point.

MR. DORN: I want your honors to refuse to swear the witness. We object to the witness being sworn.

JUSTICE STAFFORD: We cannot do that.

MR. DORN: We object to any testimony being taken, on the ground that as the proceedings now appear before the Court the respondent has never been served with any notice to appear at this time or this place. They are required to proceed under Section 276 of the Code, which reads as follows: [Reads.] It is in evidence before your honors that no notice specifying this time and the place at which your honors met was ever served upon respondent. It matters not to me whether that mistake, or that wrong, whichever you will, occurred in the Sheriff's office or before the notice was served. This notice takes the place of a summons in an ordinary proceeding.

JUSTICE STAFFORD: We have no authority to pass upon that question at all. We have only the power to hear the testimony.

MR. DORN: We say that the citation which calls on us to appear in another Court is no citation at all. The law states that the time and place must be stated, and we now protest against any deposition being taken, and I ask your honors, in accordance with that, to refuse to hear a matter which has never been properly brought before this Court.

MR. CLUNIE: I don't know that it is necessary for me to prove the fact.

JUSTICE STAFFORD: No, you can proceed and prove the facts.

MR. DORN: I want it formally on the record that the objection is made to the witness being sworn, on the ground that no citation has been served.

JUSTICE STAFFORD: We cannot make a ruling.

MR. DORN: We except.

MR. CLUNIE: I will now call Mr. Welch on the matter of this notice.

L. J. WELCH.

A witness on behalf of contestant, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: You are a Deputy County Clerk of this city and county? Answer—Yes, sir.

Question—Under Mr. Ruddick? A. Yes, sir.

Q. You were such on the tenth day of December, 1888? A. Yes, sir.

Q. Do you remember the fact of a statement of contest having been filed in your office on that day by John J. Sullivan against Mr. Banks? A. Yes, sir.

Q. Will you look at that paper [showing] and state whether that is the statement or not? A. That is the statement.

Q. That was received in your office on the day set forth there? A. Yes, sir.

MR. CLUNIE: We offer that statement in evidence, with the indorsement thereon.

MR. DORN: It is part of the record in this case.

JUSTICE STAFFORD: We have no authority to pass upon anything.

By MR. CLUNIE: Who was that statement received from by you? A. I think I received it from you.

Q. On the receipt of that statement what did you do, sir? A. I filed it.

Q. Did you perform any other act at that time? A. Yes, sir; I issued a commission.

Q. Look at that commission [showing]. Is that the commission that was issued by you at that time? A. Yes, sir.

MR. CLUNIE: We offer this commission in evidence, also, if the Court please. It is the first commission. We ask that the statement be marked "Contestant's Exhibit A," and the commission "Contestant's Exhibit B."

[The statement is here marked by the Justices "Contestant's Exhibit A," and the first commission is marked "Contestant's Exhibit B."]

Cross Interrogatories.

By MR. DORN: What did you do with that commission, contestant's Exhibit B, when you issued it? Answer—I think I delivered it to Mr. Clunie, or Mr. Ruddick; I don't know which now.

Q. Subsequent to that time, as Deputy County Clerk, did you take any action in this whole proceeding? A. Yes, sir.

Q. What action did you take? A. The County Clerk, Mr. Ruddick, notified me that Judge Stafford would be unable to proceed with the examination at the time, and the Clerk directed me to issue a commission directed to Judges Boland and Joachimson.

Q. What did you do? A. I issued the commission.

Q. Is that [showing] the commission that you issued? A. Yes, sir.

Q. What did you do with this? A. I delivered it to the County Clerk to be delivered to Judge Boland.

MR. DORN: We offer this commission in evidence. "A" [marked "Respondent's Exhibit A."]

Q. There is a question here about the time at which the notice, which was served upon Mr. Banks, was changed. You testified the other day, I think, that the changes in the body of that notice were in your handwriting and were made by you, and they were initialed on the margin with your initials. Can you tell us when these changes were made? A. I think that they were made the day that the second commission was issued.

Q. And that was where? A. In the Clerk's office.

Q. You don't know whether they were made before or after the service upon Mr. Banks, do you? A. I could not state that.

Q. You made those changes without any request from any one, and on your own judgment, did you? A. I don't remember who brought it to me.

Q. Did any one request you to make them? Did Mr. Shaen ask you to make them? A. No, sir; Mr. Shaen had no conversation with me about them at all.

Q. You did not make them at my request, did you? A. No, I don't think I did.

Q. Nor at Mr. Sullivan's? A. No, sir.

JOHN J. SULLIVAN.

The contestant, a witness in his own behalf, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Mr. Sullivan, you are the contestant in this matter? Answer—Yes, sir.

Q. Do you remember the fact of a statement of contest having been filed by you in the County Clerks' office, of this city and county, on the tenth day of December? A. Yes, sir.

Q. You were present when that was filed, were you? A. Yes, sir.

Q. Do you remember the fact of a commission having been issued by the County Clerk at that time? A. Yes, sir.

Q. Where did you go after that statement of contest was filed? A. I went down to your office.

Q. What occurred then? A. You made a copy of that; you exhibited a copy of it, and asked me to serve it on the Sheriff.

Q. I delivered to you a copy of a paper, and asked you to serve it? A. Yes, sir.

Q. That paper which I gave you was the same paper that was introduced here in evidence by Mr. Dorn. Without identifying it particularly, could you say it was the paper you delivered to the Sheriff? A. I did not see that paper. I understood it was an exact copy of the original.

Q. Any paper that was then delivered to you, what did you do with it? A. I took it to the Sheriff's office and delivered it to Mr. Simon, Deputy Sheriff.

Q. That occurred in the Sheriff's office? A. Yes, sir.

Q. And you paid him his fee as Sheriff? A. Yes, sir.

Q. Did that paper, while in your custody, have any changes in it? A. No, sir.

Q. You never looked at it? A. I never opened it at all.

MR. DORN: I want to cross-examine him when the paper comes.

MR. CLUNIE: I shall want to ask him some further questions then. It will be understood that he may be further examined then.

MR. DORN: Yes, sir.

EDWARD J. REYNOLDS.

A witness on behalf of contestant, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Mr. Reynolds, what is your business? Answer—Book-keeper in the Sheriff's office.

Q. You are a deputy under Mr. McMann, also? A. Yes, sir.

Q. You were such deputy on the tenth of December? A. Yes, sir.

Q. And how long prior to that time had you been? A. Almost two years.

Q. And you have been ever since, haven't you? A. Yes, sir.

Q. Do you remember the fact of J. J. Sullivan coming into the Sheriff's office about the tenth or eleventh of December? A. Yes, sir.

Q. You were present then, were you? A. Yes, sir.

Q. State what then occurred? A. Mr. Sullivan came in with the notice of contest against Mr. Banks, and both Mr. Simon and I were looking at

the contest. I didn't have time to attend to it just then, and I told Mr. Simon to attend to it, and he collected the fees. It was presented to the Superior Court Register.

Q. Mr. Sullivan had the notice of contest when he came in, didn't he?
A. Yes, sir.

Q. What did he do with that? A. He passed it along the desk to Mr. Simon and me.

Q. You were both there together? A. Yes, sir. The notice, after it was on the Superior Court Register, I delivered it to Mr. Derham, a deputy in the office.

Q. John Derham? A. Yes, sir.

Q. He was a deputy in the office? A. Yes, sir.

Q. You and Mr. Simon were together, I understand? A. Yes, sir.

Q. From the time you received that notice, up to the time of its delivery to Mr. Derham, were there any changes made in that notice? A. No, sir.

Q. Either by yourself or Mr. Simon? A. No, sir.

Q. Did any person change it there? A. No, sir.

Q. Did any person change it while it was in your custody? A. No, sir.

Cross Interrogatories.

By MR. DORN: Do you know whether at the time the paper was delivered to you in the Sheriff's office there were any changes in the original? In other words, if there had been any name erased and another one substituted, did you examine it with sufficient accuracy to know whether it was received in its present form, or whether it has been changed since? Answer—It is my recollection that it was received in its present form, because it is seldom in this kind of notice we take the time to examine the contents of them.

Q. The best of your recollection is that it was received in its present form? That is all.

By MR. CLUNIE: What do you mean by its present form? Answer—I mean the way we received it, it was delivered to the deputy.

Q. You do not mean to say by that testimony that L. J. Welch's initials were there, do you? A. I don't know. I did not read the notice at all.

Q. Explain in your meaning to the Court, when you say it was delivered in its present form. You have not seen it, have you? A. I have not seen it now; no, sir.

Q. You don't know what its present form is? A. I don't know what its present form is just now, but I was not positive what the form was when it came in there.

Q. You know this paper has been in Mr. Banks' house for some time, don't you? A. I know it was delivered to him on that date.

Q. And you do not want the Justices to understand you that the paper was in the same condition when it was delivered to your possession that it is now, do you? A. No, that is not what I mean at all.

By MR. DORN: Isn't it possible, by some rule or order of Court, to require a witness to be fairly examined—in other words, to reject leading questions?

JUSTICE STAFFORD: No, sir; we have no more power than a Notary Public would have. We simply take the depositions.

THE WITNESS: I wish the Court to understand that I was not aware what the contents of the body of that was at all, and I have not read it.

By MR. CLUNIE: But you did swear, as I understand it, that while it was in your possession no changes were made, either by you or Mr. Simon?
A. Yes, sir.

JOHN F. DERHAM.

A witness on behalf of contestant, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: What is your business? Answer—Deputy Sheriff.

Q. How long have you been Deputy Sheriff? A. Two years.

Q. You are a Deputy Sheriff of this city and county, are you not? A. Yes, sir.

Q. Deputy under Mr. McMann? A. Yes, sir.

Q. You were such the last two years? A. Yes, sir.

Q. And are now? A. Yes, sir.

Q. Do you remember the fact of a notice of contest of the election of Mr. Banks having been received in the Sheriff's office on the tenth day of December? A. I do.

Q. What connection did you have with that notice? A. Simply to serve the writ upon Mr. Banks.

Q. Whom did you receive the notice from? A. Mr. Reynolds.

Q. Are you the Mr. Derham that Mr. Reynolds refers to when he says he handed it to you? A. Yes, sir.

Q. Were you in the office when Mr. Sullivan came in there? A. Yes, sir; Mr. Sullivan was present at the time I received the writ.

Q. You received the writ from whom? A. Mr. Reynolds.

Q. What did you do with it? A. I took it up to Judge Finn's Court and served it upon Mr. Banks.

Q. During the time the writ was in your possession, did you or did any person make any change in it? A. No, sir; no one ever saw it. It was folded up as when I received it.

Q. Then the paper was never opened by you? A. No, sir.

Q. Do you know Mr. Larry Welch? A. Yes, sir.

Q. Did he make any change in it after you received it? A. No, sir.

By MR. DORN: We object as leading.

MR. CLUNIE: There were no changes made in it up to the time you served it? A. No, sir.

By MR. DORN: Do you know whether at the time you received the paper it was in its present condition or not, sir? A. I couldn't say because I have never read the paper.

 ANDREW J. CLUNIE.

A witness on behalf of contestant, was duly sworn, and testified as follows:

THE WITNESS: I will state that on the tenth day of December, 1888, I filed the statement of contest of the election of W. O. Banks by John J. Sullivan, marked "Contestant's Exhibit A," in the office of the County Clerk of the city and county, with Mr. L. J. Welch, who was then a Deputy County Clerk, and at the time I filed it I had issued, or at least Mr. Welch, in the name of Mr. Ruddick, issued the commission introduced here, marked "Contestant's Exhibit B." Mr. Sullivan was with me at that time, and immediately after that statement had been filed and the commission issued, I went down to my office and there drew a notice of contest, which Mr. Dorn introduced in evidence here, and that notice is all in my handwriting, with the exception of the interlineations introduced by Mr. Welch. Mr. Sullivan was with me at the time I drew the notice

in my office, and I delivered it to Mr. Sullivan with instructions to take it to the Sheriff's office. At the time I delivered it to Mr. Sullivan, those interlineations were not in there, and the names of the Justices are Honorable James I. Boland and Honorable H. J. Stafford, and that interlineation has been made since it left my possession, and since it left Mr. Sullivan's—if made at all.

Cross Interrogatories.

By MR. DORN: You delivered it in your office to Mr. Sullivan, did you?

A. Yes, sir.

Q. What day was that? A. That, I think, was on the same day, the tenth.

Q. Do you know? A. No, I am not positive as to that.

Q. It might have been the next day? A. Yes; it was either the tenth or the eleventh. I know we went down to the office and drew it the tenth, I think; and whether I delivered it to him that day or the next, I am not positive.

Q. Do you know whether you drew it on that day? A. Yes, sir.

Q. You are positive you drew it on that day? A. Yes, sir.

Q. But you don't know whether you delivered it to him on that day or not? A. No, sir.

Q. Then Mr. Sullivan may be mistaken when he says you delivered it to him and he went down and delivered it immediately? A. Yes, sir.

Q. Then it may have been the day following, instead of the tenth? A. Yes, sir. It was either the tenth or eleventh.

Q. You don't know what Mr. Sullivan did with it after he got it? A. No, sir; only what he has sworn to.

Q. All that you know is that on the tenth or the eleventh you delivered it to Mr. Sullivan? A. Yes, sir; and I will state further that those interlineations were not in my handwriting. The body of the notice is.

S. L. SIMON.

A witness on behalf of the contestant, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Mr. Simon, what is your business? Answer—Book-keeper in the Sheriff's office.

Q. You are also a Deputy Sheriff, are you? A. Yes, sir.

Q. And you have been how long? A. A good many years. Under this administration, too.

Q. You have been all the time during Mr. McMann's incumbency in office? A. Yes, sir.

Q. And are now? A. Yes, sir.

Q. Were you in the office on the tenth of December of this last year? A. I was.

Q. Do you remember Mr. Sullivan coming into the office on that day? A. Yes, sir.

MR. DORN: We object as leading. I suppose your honors ought to direct the witness to answer, and there ought to be an exception noted, in order to give us the benefit of it.

JUSTICE STAFFORD: Ask the questions and make the objections, and that is all.

MR. CLUNIE: I will consent that it can be understood that to every question asked, Mr. Dorn has an objection and exception, and that I have the same.

MR. DORN: Let it be entered that it is stipulated here by and between counsel for contestant and respondent that each and every question asked by counsel for contestant and each and every question asked by counsel for respondent is objected to on all grounds, and that exception is noted, without specifying any objections or exceptions at the time the questions are asked.

By MR. CLUNIE: Were you present in that office at that time when Mr. Sullivan came in there one of those days? A. I was; I took the writ from him.

Q. Who was there at that time? A. Mr. Reynolds was standing alongside of me. I took the writs from him.

Q. Do you remember who else was there? A. Mr. Reynolds.

Q. Mr. Sullivan was there? A. Yes, of course; he brought them in.

Q. You took the writ from Mr. Sullivan? A. I did, sir.

Q. What was done with the writ then? A. I stamped it as having been received in the Sheriff's office, and then entered it on the register.

Q. Then what did you do with it? A. There was no deputy in at the time, and I laid it on Mr. Reynolds' book and told him to give it to a deputy as soon as somebody came in.

Q. You handed it over to Mr. Reynolds there? A. Yes, sir.

Q. And that is all you know about it? A. That is all.

Q. During the time that writ was in your possession, and prior to handing it to Mr. Reynolds, did you, or did anybody else make any changes in it? A. No, sir; I never allow anybody to make any changes in them.

Q. Mr. Welch did not make any changes in it while it was in your possession? A. No, sir.

Q. You didn't have this Contestant's Exhibit A? A. No, sir.

Cross Interrogatories.

By MR. DORN: You stamped on it the date you received it, did you? A. Yes, sir.

Q. At the time you received that statement of contest and notice, do you know if it was in its present condition? A. I cannot tell that. I don't know what was done to it after it left my hands.

Q. Do you know whether at that time it was all in one handwriting, or whether there had been any changes or interlineations? A. I didn't read it through.

Q. You don't know and cannot tell? A. I could not tell you.

MR. DORN: Of course your honors will rule that you take and have jurisdiction, because if you proceed with depositions you do so.

MR. CLUNIE: We want to get this testimony before the Legislature. That is all. I would like to have it noted in my testimony that that notice is all in my handwriting except the words "H. L. Joachimson."

MR. DORN: The paper sent for is here now and I want to recall Mr. Sullivan.

JOHN J. SULLIVAN.

Recalled.

Cross Interrogatories.

By MR. DORN: I understand you to say that you received this paper from Mr. Clunie; that when you filed your notice of contest you were present in the Clerk's office with Mr. Clunie? Answer—Yes, sir.

Q. And that you then went to his office and he wrote out and handed and delivered it to you? A. Yes, sir.

Q. Did he deliver it to you immediately upon writing it? A. The same day; yes, sir.

Q. What time in the day? A. I should judge it to be about between four and five o'clock in the afternoon.

Q. What did you do with the notice? A. Put it in my pocket.

Q. What did you do with it afterwards? A. Took it home.

Q. How long did you keep it there? A. Until the next day.

Q. What time in the day? A. I should judge about two o'clock in the afternoon.

Q. Then what did you do with it? A. Brought it out and delivered it to the Deputy Sheriff, Mr. Simon.

Q. You delivered it to Mr. Simon, did you? A. Yes, sir.

Q. Do you know whether at the time you delivered it to Mr. Simon it was in its present condition or not? A. I don't know what its condition is at present.

Q. Do you know if it was all in Mr. Clunie's handwriting at the time you delivered it to Mr. Simon? A. Yes, sir.

Q. Do you know it? A. I think it was; yes, sir.

Q. Do you know? A. I am pretty positive it was.

Q. But you are not positive of it? A. Yes, sir; I am positive. I didn't see anybody else write anything in it.

Q. Are you positive that it was all in Mr. Clunie's handwriting at that time? A. As positive as I can be of anything.

Q. Did you at any time take that notice, or any of those papers, into the Clerk's office? A. No, sir.

Q. Between the time you received that notice in Mr. Clunie's office and the time you delivered it to the Sheriff, did you see Mr. Welch? A. No, sir.

Q. Are you positive of that? A. Yes, sir.

Q. You are positive you didn't see Mr. Welch? A. I didn't see Mr. Welch. I saw Mr. Shaen.

Q. I don't ask you about Mr. Shaen. Was the paper out of your possession at any time between the time you received it from Mr. Clunie and the time you delivered it to Mr. Reynolds? A. No, sir. I delivered it to Mr. Simon. It was not.

Q. Is that the paper that you delivered to Mr. Simon [showing]? A. I couldn't swear whether it was or not. I didn't pay any attention.

Q. You don't know whether that is the paper or not? A. Not the writing; no, sir.

Q. You couldn't say whether that is the paper or not? A. No, sir; I could not?

Q. Is that your signature? A. Yes, sir.

Q. Do you mean to say whether that is the paper or not? A. I never read it.

Q. Well, I say, you cannot swear whether that is the paper or not? A. I think it is, but I wouldn't swear positive.

Re-direct Interrogatories.

By MR. CLUNIE: You say you saw Mr. Shaen? A. Yes, sir.

Q. What did Mr. Shaen have to say about this matter? A. Mr. Shaen said this case would not come up before two Democratic Judges. He said, "We are going to have Joachimson in that case."

Q. Mr. Shaen said that? A. Yes, sir.

Q. That he was going to have Joachimson? A. "We." That is, not meaning him and me. But he meant his friends in the case. You asked me the question about going to see Mr. Welch. I did go to see Mr. Welch, but it was after I delivered that to the Sheriff.

By MR. DORN: What did you go to see Mr. Welch about? A. About this change. I spoke also to Mr. Clunie in regard to the change.

Q. What did you say to Mr. Welch about the change? A. I asked him what they changed the Judges in regard to this case for.

Q. What did he say? A. He said Judge Stafford said he could not act in the matter.

Q. Then, at the time you delivered this paper to the Sheriff, you knew that there had been a change? A. No, I didn't know that there had been a change.

Q. Then what did you go to see Mr. Welch for? A. After I delivered the paper I went to see Mr. Welch.

Q. Immediately? A. No, I think it was the next day. I spoke to Mr. Clunie, and he said they had no right to make any changes.

Q. When did you find out that there had been any change? A. Not until Mr. Welch told me.

Q. When did you see Mr. Shaen? A. I suppose I saw Mr. Shaen the next day after the papers had been served.

Q. You didn't see him before the papers were served? A. No, sir.

Q. You didn't see him while you had the papers in your pocket? A. No, sir.

By MR. CLUNIE: Mr. Shaen did not tell you they were going to change it? A. I understood they were going to arrange it, from his conversation.

 W. O. BANKS.

The respondent, called as a witness in his own behalf, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Did you ever see that paper before? [Showing.] Answer—Yes, sir.

Q. Where? A. It was served on me by a Deputy Sheriff.

Q. Is it in the same form that it was when it was served on you? A. Yes, sir.

Q. I don't care about the contents of the printed part of it. Do you see there the name of Mr. Stafford erased, and the name of Joachimson inserted, and the initials "L. J. W., Clerk," opposite, inserted? A. Yes, sir.

Q. Was that there at the time it was served on you? A. Yes, sir.

Q. You see below the name of Stafford erased, and Joachimson inserted? A. Yes, sir.

Q. Was that change there when it was served on you? A. Yes, sir.

Q. When that paper was served on you, what did you do with it? A. I gave it to you.

Q. In that present form? A. Yes, sir.

Cross Interrogatories.

By MR. CLUNIE: You are sure it was in that form, are you? A. Yes, sir.

Q. What makes you so sure of it? A. Because I am.

Q. What is the reason for it? You have some reason for being so certain about this. A. I saw the interlineation and noticed it.

Q. You noticed the interlineation particularly at that time? A. I did.

Q. What was written there do you say? A. There is an interlineation: "Joachimson" for, I think, "Stafford."

Q. Don't you know? You say you read it. A. Give me the paper.

Q. Well, tell us; you say you read it, and looked it all over. A. I believe it was the substitution of one Judge for another.

Q. What Judge? A. Judge Joachimson for, I think, Judge Stafford.

Q. You say you think so. Don't you know? A. Yes, sir.

Q. What was it? A. It was the substitution of Judge Joachimson for Judge Stafford.

[Here counsel for respondent passes the witness the paper.]

MR. CLUNIE: I object to you handing him any paper, or interfering with the witness. I submit to your honors that that is improper. I ask your honors to make a ruling here. I can show your honors that you have the right to do it. The Code says that you have the right, sitting here, to see that the proceedings are conducted in a proper manner, and that is not a proper manner, I say. I have never before heard of an attorney going up to the stand and handing the witness papers.

MR. DORN: I have no objection to that ruling being made.

MR. STAFFORD: I think you have only the right to make an objection to counsel showing witness a paper.

MR. DORN: I think, in all fairness under the law, your honors, sitting here to hear this testimony, have a right to see that the proceedings are conducted as they should be conducted in any Court, and I believe that that right includes such orders as would compel the attorneys to conduct themselves properly.

MR. CLUNIE: I want it to go on record that it appears that Mr. Banks was unable to state as to what—

MR. DORN: I object to that going on the record. I ask your honors not to put on the record statements that are not sworn to.

MR. STAFFORD: We might suggest that the objection was made to counsel showing the witness the paper, and state the ground of objection.

MR. DORN: No objection.

MR. CLUNIE: I object to Mr. Dorn, after Mr. Banks was unable to state what the interlineations were, getting up and going over to the witness and handing him a paper and pointing to the interlineations.

MR. DORN: We ask it to be noted that Mr. Banks was not unable to state, and was stating truthfully.

MR. CLUNIE: Please hand me that paper. State what the interlineations are? A. The interlineation was that Judge Joachimson was substituted for Judge Stafford.

Q. What are Judge Joachimson's initials? A. H. L.

Q. What are Judge Stafford's? A. I couldn't tell you.

Q. Did you read it at the time? A. Yes, sir.

Q. Was the name in there at the time it was served on you? A. The name of Stafford was scratched out.

MR. DORN: He stated that the change was made at the time he received it, substituting Judge Joachimson for Judge Stafford.

MR. CLUNIE: I object to Mr. Dorn interfering and correcting the witness, and stating anything that he did not state.

Q. Was the initial "M" in there when it was served on you? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. Just as sure as you are of anything else you have testified to—"Justice Stafford" and the "M" was scratched out? A. Yes, sir.

Q. You swore to that a moment ago, didn't you? A. I understand that as well as you do.

Q. The "H. M." was scratched out? A. I don't know positive that it is "H. M." Stafford.

Q. You don't know positive what they were? A. I do not.

Q. Is that all the change that was made in it? A. "H. M. Stafford" was scratched out.

Q. And "H. L. Joachimson" was put in there? A. No; I think not.

Q. What else was put in there? A. I think the place was changed to Judge Joachimson's office and the other portion.

Q. What was the other portion, do you remember? A. Other offices, I think; I cannot swear. I didn't commit that paper to my memory. I cannot recite that word for word.

Q. You are unable to state the interlineations that were made? A. I state them as far as I know what they were.

Q. And that is as far as you remember? A. Yes, sir.

Q. And the only reason you state that is that it has not been out of your possession? A. It has been out of my possession.

Q. Where? A. It has been in my attorney's possession.

Q. You don't swear that any changes have been made in it by your attorney? A. As far as I know.

Q. All you can say is, that while this paper was in your possession no changes were made in it? A. That is all.

Q. And that is all you can swear to? A. That is all.

MR. DORN: I ask you to look at that paper, Mr. Banks [showing], now; and I ask you to examine that paper carefully, and tell me if it is in the same condition it was when you received it? A. It is, as far as I can see.

Q. Were those interlineations there when you received the paper and delivered it to him? A. Yes, sir.

Q. During the time it was in your possession did you make any changes in it? A. I did not.

Q. Did you deliver it to him in precisely the same condition you received it? A. Yes, sir.

Q. Between the time you received it and the time you delivered it to him, did you make any change or scratch in it? A. No, sir.

MR. CLUNIE: I want it to appear on the record, that at the time this paper was shown it was not part of the record, and it was in the witness' handwriting.

M. A. DORN.

A witness for respondent, was duly sworn, and testified as follows:

THE WITNESS: That paper is a paper which was delivered by Mr. Banks, the respondent in this case, to me, on or about the eleventh day of December. My impression is that it was delivered to me on the day it was served, on the eleventh. As to that I cannot state positively. At the time it was received by me from Mr. Banks the interlineations which now appear upon it were upon it, and in the same form, and since its receipt by me there has been no change whatsoever in the form of the notice.

MR. CLUNIE: The same objection to his testimony, that he refers to a paper not in evidence, and makes statements as to a paper not in evidence.

MR. DORN: We offer this paper in evidence, and ask that it be marked "Respondent's Exhibit B."

[Paper marked "Respondent's Exhibit B."]

MR. DORN: That will be introduced in evidence, with the understanding that it is our paper, and we may be allowed to withdraw it any time.

L. J. WELCH.

Recalled for respondent.

By MR. DORN: You testified some time ago that those interlineations were made by you. Answer—Yes, sir.

Q. And that they were in your handwriting? A. Yes, sir.

Q. At whose request did you make them? A. I don't remember.

Q. Where were they made? A. In the County Clerk's office.

Q. Who brought the paper into the County Clerk's office? A. I cannot tell that. I don't remember. I paid no attention at the time it was brought in.

Q. And on what date were they made? A. I am positive it was made the day that the second commission was issued.

Q. You know that they were made in the Clerk's office? A. Yes, sir. I don't remember who brought it, but I made the changes to correspond with the second commission.

Q. The second commission was issued on the eleventh, was it? A. Yes, sir.

Q. And this was done at the same time? A. At the same time.

Q. Do you know whether or not the changes had been made before the paper had been served? A. Before that statement had been served?

Q. Yes, sir. A. No, they were made after the return of service of the statement.

Q. Were these changes made in the paper after it had been served on Mr. Banks by the Sheriff? A. Yes, sir.

Q. Who by? A. The changes in there?

Q. Yes, sir. A. By me.

Q. Who brought the paper into your office, then? A. I don't know.

Q. Do you mean to say that the changes had been made after the paper had been served by the Sheriff on Mr. Banks? A. I can't say positively about that.

Q. What day were they made. Do you know that? A. The day that second commission was issued.

Q. What day was the second commission issued? A. I will have to look at it to see.

Q. It was issued on the eleventh. Do you know what time of day it was? A. In the afternoon, I think?

Q. Was it after three thirty in the afternoon? A. I can't tell that either. I know it was in the afternoon some time.

Q. Was it after four o'clock—after your office hours? A. No; it was during office hours.

Q. Do you know whether it was after three thirty? A. I don't know that.

MR. DORN: I ask that the reporter note that this paper which was served upon Mr. Banks bears the indorsement that it was received by the Sheriff on December 11, 1888, at three thirty p. m., and that the Deputy Sheriff testified that that was the time he received it, and that it was some time after that before the deputy came into the office to serve it.

MR. CLUNIE: He did not testify to anything of the kind. He testifies it was taken immediately on receipt, up to Judge Finn's Court to where the count was going on.

MR. DORN: And you say you do not know at whose request the changes were made, or who brought it to you? A. No, I do not know; I don't remember who brought it to me.

[Testimony on change in notice, closed.]

FAUST MASCHERINI.

A witness on behalf of contestant, was sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Mr. Mascherini, what is your business? Answer—Grocery and bar.

Q. Where is your place of business? A. Corner of Greenwich and Montgomery Avenue.

Q. Where do you live? A. At the same place.

Q. How long have you lived there? A. Seven years.

Q. Were you living there about the time of this election, that occurred on the sixth of November? A. Yes, sir.

Q. You were a resident of the Twenty-first Senatorial District, were you? A. Yes, sir.

Q. Where were you on election day? A. I was in the store.

Q. Where were the polls held? A. Right in our place.

Q. In your store, at 718 Greenwich Street? A. Yes, sir; facing on the avenue.

Q. That is, Montgomery Avenue? A. Yes, sir.

Q. You were present there on the morning of election, were you? A. Yes, sir.

Q. Do you know Mr. Banks, this gentleman here [indicating respondent]? A. I know him that morning.

Q. This little gentleman? A. Yes, sir.

Q. Did you see him on that morning? A. Yes, sir.

Q. Where did you see him? A. On Greenwich Street. I was introduced to him right opposite my store.

Q. Right opposite the polls? A. Yes, sir.

Q. How far from the polls were you? A. About fifty feet.

Q. No further than that? A. No, sir.

Q. You were introduced to him by whom? A. S. DeMartini.

Q. You had some conversation with him? A. I had a few words to say.

Q. What did he say to you? A. He told me to do the best I can for him.

Q. What else did he say? A. He didn't say anything more to me, because he was excited, and on account of the election: he didn't have much to say, because he was busy.

Q. At that time, when Banks told you to do all he could for him, did he give you any money? A. Yes, sir.

Q. What did he give you? A. When he told me that, I said, "We need some coin to do something."

Q. You told him you needed some coin? A. No; I said we needed some coin to treat the boys.

Q. Then what occurred? A. He gave me ten dollars, and we got the boys who were standing there, and I treated them.

Q. Did he say anything about doing what you could at that time? A. He gave me ten dollars, and said, "Do the best you can for me," and to treat the boys: that was the meaning, you see.

Q. That is what you think it meant? A. That is what he meant it for.

Q. About this coin, did you ask him for this money? A. That is the simple reason; he told me to do the best and for the boys.

Q. He gave you the money without asking? A. Certainly, without asking it.

Q. That occurred within the precincts of the polls, where? A. Third of the Thirty-fourth.

Q. The third precinct of the Thirty-fourth Assembly District of the Twenty-first Senatorial District on this morning? A. Half past ten in the morning.

Q. On November sixth, in this city and county? A. Yes, sir.

Cross Interrogatories.

By MR. DORN: Were you ever introduced to Mr. Banks at any other time? A. No, sir.

Q. Didn't Buckley introduce you to Banks? A. It was Buckley and DeMartini at the same time.

Q. You were introduced by the two of them at the same time? A. The one who introduced me was DeMartini.

Q. How long have you been in business there? A. About six or seven years.

Q. Have you ever bought any man's vote. A. No, sir.

Q. Have you ever tried to bribe any man to vote any particular way? A. No, sir.

Q. Have you given a man any money or consideration for voting for one candidate or against another? A. No, sir.

Q. Have you ever given a man anything out of your store and out of your saloon, or any other store, or anywhere else, to influence him to vote one way or the other? A. No, sir.

Q. Have you ever bribed anybody to vote for or against Mr. Banks, or have you ever bribed anybody to vote for or against Mr. Sullivan? A. No, sir.

Q. Have you ever treated a man for the purpose of influencing his vote for one man or against another? A. I treated the boys that were inside at that time.

Q. Did you treat them to buy their votes for or against anybody else?
A. No, sir.

Q. When you treated them, or after you treated them, did you ask them to vote for one man or another? A. No, sir; that was not my business.

Q. And you did not buy them? A. No, sir. I only said, "Boys, here is a treat from Banks."

Q. Did you say anything to them about voting for Banks? A. No, sir, because they were all mixed up.

Q. Did you say anything to them about voting against Sullivan? A. No, sir.

Q. You did not ask them to vote one way or the other? A. I did not ask them to vote one side or the other.

Q. You did not try to influence their votes one way or the other? A. No, sir.

Q. You say Banks gave you ten dollars? A. Yes, sir.

Q. Did you use that money in any way whatever to influence any man's vote? A. No, sir; I put it right in my till.

Q. And you kept it right there? A. Yes, sir.

Q. And you did not give it to anybody? A. No, sir.

Q. And you say you have by no consideration of money or otherwise sought to influence, during the last election, any man's vote for or against Mr. Banks, or for or against Mr. Sullivan? A. No, sir.

Q. You kept this money, did you? A. Yes, sir.

Q. You put it in your till and put it to good use? A. Yes, sir.

Q. When Banks gave you that money did he say that he wanted you to vote for him? A. He gave me that money and he told me, "I hope you will do the best you can for me."

Q. Did you understand that he was buying your vote with that ten dollars? A. Oh, no.

Q. Did you understand that you were to buy anybody else's vote, or to influence anybody else's vote for him? A. No, sir.

Q. You considered it a mere act of friendship? A. I considered that it treats the boys, to have a drink with him.

Q. Around the different polling places and where the ballots are cast, they have a poor box, haven't they? A. Yes, sir.

Q. And in that, as they come along, every man is expected to drop something for the boys? A. Yes, sir.

Q. In doing that, is it the intention to buy anybody's vote, or to do anything wrong? A. No. He gave the money to me. There was no poor box in my pocket.

Q. What was the matter with your till being a poor box? A. That was a private business, you see. That had nothing to do with the poor box or with the election office.

Q. It was simply for you personally? A. Yes, sir.

Q. And it was between you and Banks? A. Yes, sir.

Q. Do you say that money was not to buy your vote? A. No, sir.

Q. Or was not to influence your vote? A. No, sir.

Q. Or the vote of anybody else? A. That was not mentioned at all to me.

Q. Did you understand that you were to do such things? Did you understand that your vote was to be bought for that ten dollars? A. No, sir.

Q. Did you understand you were to use that ten dollars to buy anybody's else vote? A. No, sir.

Q. And you did not use it so? A. No, sir.

By MR. CLUNIE: All you know is that Banks met you and told you to do all you could for him? A. Yes, sir.

Q. And gave you ten dollars? A. Yes, sir.

Q. And on that you went into your saloon and said: "Boys, let us have a drink on Banks' money." Is that it? A. And Banks left.

By MR. DORN: You said: "Let us have a drink with Banks." Did you? A. Yes, sir.

Q. And that was all that was done? A. Yes, sir.

By MR. CLUNIE: If you hadn't got that ten dollars, you wouldn't have have done that? A. If I didn't get Banks' money, I don't treat the boys; certainly I wouldn't.

By MR. DORN: Do you know Mr. Sullivan, this gentleman here (indicating contestant)? A. Yes, sir.

Q. Did you know him at the time he was a candidate for State Senator at the last election, in the Twenty-first Senatorial District? A. Yes, sir.

Q. Was he ever in your place? A. Yes, he was.

Q. Did he ever treat the boys there? A. Yes, sir.

Q. Did he set them up for the boys in that place? A. Yes, several times.

Q. About how many times during the time he was a candidate for the office of State Senator at the last election? A. I couldn't tell you that, because sometimes I am there and sometimes my partner is there.

Q. You have seen him in your place and have seen him treat the boys? A. Yes, sir.

Q. Was he in your place on election day? A. Yes, sir.

Q. Did he treat the boys there that day? A. I couldn't tell you. Every time he came in there he always treated the boys.

Q. And election day he was in there? A. Yes, sir.

Q. He is a pretty good fellow if he always sets them up for the boys? A. Yes, sir. Everybody does the same thing.

Q. Everybody that came in gave you money to treat the boys? A. No, sir, he didn't do that. He came in and treated the boys standing up against the counter.

Q. And he paid you for the drinks you gave at his order to the boys, as you call them? A. Yes, sir.

Q. On election day? A. Yes, sir.

By MR. CLUNIE: Mr. Banks did not stand at the bar when he had this little conversation with you, did he? A. No, sir.

Q. You were out on the sidewalk, weren't you? A. No, sir.

Q. Where were you when you met Mr. Banks? A. I was introduced in the street, and then he came in the store.

Q. You were in the street first and had this conversation in the street? A. Yes, sir.

Q. Then Mr. Banks came in the store after he told you to do what you could? A. No, sir; he came in and gave me the ten dollars inside the store.

Q. Ain't you mistaken about Mr. Sullivan being in your place on election day at all? A. I am sure I saw him on election day.

Q. But you ain't sure you saw him on election day at your place? A. Certainly, because he has been in there.

Q. Wasn't it the day after? A. I couldn't tell if he was there the election day, I saw so many there. He might pass by there. I see his face. I won't say sure.

By MR. DORN: But you are sure he was in there a number of times before election day, and treated the boys? A. Yes, sir; he has been there a few days before election.

Q. When he treated the boys, what did he say about voting for him? A. He knows well when they have a treat from a candidate they all vote for him.

Q. And that was the understanding when Mr. Sullivan treated the boys in your place? A. Yes, sir.

Q. That they were to vote for him because of his treating them? A. Yes, sir.

Q. He had that understanding several times, with several different crowds, in your saloon before election? A. Yes, sir; sometimes he treats.

By MR. CLUNIE: How do you know he had that understanding? Mr. Sullivan never said that to you? A. No, sir.

Q. Mr. Sullivan never said he expected the boys to vote for him because he gave them a drink? That is what you understood? A. When the boys take the glass and drink down and say, "Here is the health to Mr. Sullivan," they do it.

Q. When you say it was the understanding that when Mr. Sullivan gave them a drink, you don't mean that, do you? A. No; they all drink.

By MR. DORN: And you mean when the boys take up the glass they say, "Here is to Sullivan for Senator?" A. Yes, sir.

Q. "Here is to Sullivan, our next Senator?" A. Yes. So they did the same thing with Banks.

By MR. CLUNIE: Did Sullivan ever give you ten dollars and say, "Do all you can for me?" A. No, sir.

JOHN DYKEMAN.

A witness on behalf of contestant, was sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: What is your name? Answer—John Dykeman.

Q. What is your business? A. Engineer.

Q. Where are you working? A. In the United States Appraiser's building.

Q. Do you reside in the Twenty-first Senatorial District? A. Yes, sir.

Q. Where? A. At 1108 Taylor Street.

Q. That is what precinct? A. The seventh.

Q. Of what district? A. The thirty-third.

Q. How long have you resided there? A. Three years.

Q. You lived there on the day of election, did you? A. Yes, sir.

Q. And prior thereto? A. Prior.

Q. Where were you on the day of election? A. Around the polls in the Seventh Precinct of the Thirty-third District.

Q. Were you around there after the election was over? A. Yes, sir.

Q. What was your business there? A. I was put there by the Democratic County Committee to look out for their interests.

Q. You were there how long? A. During the count.

Q. Off and on, I suppose? A. Yes, sir.

Q. Do you know a gentleman by the name of Jones? A. Yes, sir.

Q. What was he doing there? A. Republican Inspector.

- Q. He was there when? A. At the same time that I was there.
- Q. When did the count commence? The count commenced on the night of the sixth, didn't it? A. The night of the sixth, after the polls closed.
- Q. During the time that Jones was there, was he acting and calling off the ballots? A. Yes, sir.
- Q. In relation to the count for Senator, he also called that off, didn't he? A. Yes, sir; he called the ticket right off.
- Q. During that time, did you see Mr. Jones do anything in regard to calling off the ballots cast for Senator, that was improper, and state what it was. A. I heard him calling the name of Banks on a Democratic ticket. I had seen the ticket as it come out of the box, and he called the name of Banks, and after he got through reading the ticket I told him Banks' name was not on it, and he said he probably made a mistake, and Sullivan got the vote.
- Q. That was where? A. The seventh of the thirty-third.
- Q. Which was the gentleman? A. This gentleman right here [showing].
- Q. Do you know where that gentleman lived? A. At that time I think he lived on Clay Street, corner of Wetmore Place.
- Q. In what district was that? A. The Thirty-second.
- Q. And this you speak of occurred where? A. In the seventh of the thirty-third.
- Q. And he was there acting? A. Yes, sir.
- Q. He resides in the thirty-second? A. To the best of my knowledge.

Cross Interrogatories.

- By MR. DORN: Do you know anything about where he lives? A. I know, to the best of my knowledge, he did at that time.
- Q. Where? A. Corner of Clay and Wetmore Place.
- Q. That is in what district? A. The thirty-second.
- Q. How do you know he lived there? A. Because he is a friend of mine, and I visited him there.
- Q. When did you visit him there? A. About two or three months before election.
- Q. Did you after that? A. No, sir.
- Q. Then how do you know he lived there? A. Yes, sir.
- Q. Why? A. Because I saw him go in there and out of there.
- Q. How many times did you see him go in there and go out of there in the two or three months preceding election? A. The ordinary number of times.
- Q. How many times did you see him go in there and go out of there in the two or three months preceding election? A. Whenever I met him there.
- Q. How many times did you meet him? A. Two or three times a week; whenever he had occasion to go in or come out.
- Q. Every time you met him there? A. No, I did not.
- Q. You met him two or three times a week. How often did you see him go in there? A. He was either going in or going out every time I met him.
- Q. He was just palpitating in and out that door? A. Oh, no.
- Q. He was either going in or out that doorway? A. Oh, no. I met him somewhere else.
- Q. He was not always in the door, going in or coming out? A. Oh, no.

Q. Then what you stated a moment ago is not true? A. Yes, it was true.

Q. That is the truth. Was he always going in or coming out the door?
A. I didn't state that. I stated I met him a number of times, either going in or coming out.

Q. About how often did you meet him in the two or three months before election? A. That I can't tell exactly.

Q. Did you meet him twice? A. Yes, sir.

Q. Did you meet him three times? A. Probably.

Q. Are you sure of that? A. Yes, sir; I met him probably more than that.

Q. But you were never to his room? A. Yes, sir, I was.

Q. Didn't you state a moment or two ago you visited him two or three months before election, and you were never there since? A. I have not been there since.

Q. During the three months before election you were never in his room?
A. No, sir.

Q. And you don't know whether he lived there or went to visit somebody else there, do you? A. I know that it is—

Q. [Interrupting.] Don't guess at it. A. I know that he lived there.

Q. How do you know it? A. Because I know it.

Q. That is a woman's reason, and you are not a woman. How do you know it? A. Because that is his residence.

Q. How do you know that is his residence? You are stating a fact, and stating it under oath. How do you know that that is his residence? A. I don't know. Everybody thinks, or claims, and knows that it is his residence. If they send for him they go there for him.

Q. Then all you know about it is what everybody claims, is it? A. If I wanted him, I would go there to find him.

Q. And that is all you know? A. That is the only way.

Q. Then you don't know whether he lives there or anywhere else, and you have no means of knowing, have you? You don't know of your own knowledge whether he lives there or whether he simply goes there to visit somebody else? A. To my knowledge, he lives there.

Q. Do you know whether he lives there? A. I know that he did live there. Whether he lives there now or not, I don't know.

Q. You know he lived there three months before election? A. Yes sir.

Q. And you don't know whether he lived there since? A. To the best of my knowledge he did.

Q. Then what you state here is simply what you believe, what you think, with regard to his residence within three months prior to election; that is it, is it? A. Yes, sir.

Q. You say that on election day you listened to the counting of some of the ballots there? A. Yes, sir.

Q. You discovered a mistake there, and you called attention to the mistake, and it was rectified immediately? A. Yes, sir.

Q. That is the only mistake you know anything about? A. That is the only mistake I had anything to do with.

Q. And that was rectified immediately when it was called to their attention? A. Yes, sir.

Q. Where were you during the time the ballots were being counted? A. In the precinct; in the place where the ballots were counted.

Q. What were you doing there? A. I was watching in the interest of the Democratic County Committee.

Q. Who sent you there? A. The Chairman of the Democratic County Committee.

Q. Who was that? A. Max Popper.

Q. When he sent you there, what did he tell you? A. He told me to watch out and see that nothing was done, and to look out for our interests in general.

Q. What else did he tell you? A. Nothing else.

Q. That is very broad instruction, isn't it; that you went there to look after the interests of the Democratic party in general? A. Yes, sir.

Q. During any of the time you were in that polling place did you handle any of the ballots that were on the string? A. I looked them over.

Q. And handled them after they were strung? A. I didn't take them off the string.

Q. Answer my question. A. Yes, I did.

Q. You looked them over and counted them after they were on the string? A. Yes, sir.

Q. Didn't you know you were violating the law when you touched one of those ballots? A. No, sir.

Q. Didn't you change any of those ballots? A. No, sir.

Q. Didn't you rub your thumb through the name of anybody? A. No, sir.

Q. Are you sure? A. Sure.

Q. Positive of that? A. Positive.

Q. What were you doing with the ballots? A. There was a suspicion aroused in my mind, and I thought by looking them over I might see whether there was any crooked work being done, and we might fix it right there and then.

Q. How many of those ballots did you look at? A. I went through six or eight of them.

Q. At the time they were on the string? A. At the time they were on the string.

Q. At the time you went through those ballots you were not an officer of election, were you? A. No, sir.

Q. You were not a Judge of Election, Inspector of Election, or Clerk of Election? A. No, sir.

Q. And you handled the ballots after they were on the string? A. Yes, sir.

Q. And after they had been counted? A. Yes, sir.

Q. And you were doing that in the interests of the Democratic party? A. I was doing that for the Democratic party.

Q. And you went there under instructions from the Chairman of the County Committee? A. Yes, sir.

Q. You went there with that instruction and you did handle the ballots? A. Yes, sir.

Q. Are you a member of the Confidence Club? A. Yes, sir.

Q. Who started that club? A. I don't know.

Q. Who is the chief man in that club? A. Do you mean the President?

Q. Yes, sir. A. John Sullivan.

Q. This gentleman here, the contestant, is the President of the Confidence Club? A. Yes, sir.

Q. Where are you employed? A. In the United States Appraiser's Building.

Q. Who got you that position, sir? A. I was appointed by Judge Hager.

Q. Who got you that position, sir? A. Mayor Pond sent a letter to Judge Hager, introducing me. Mr. Hager appointed me.

Q. Who introduced you to Mayor Pond? A. William Dinan.

Q. Mr. Dinan was a candidate for the Assembly at this election over in the Twenty-first Senatorial District, wasn't he? A. Yes, sir.

Q. Mr. Dinan is a member of the Confidence Club, isn't he? A. Yes, sir.

Q. Mr. Dinan, Mr. Sullivan and yourself are all members of the club, aren't you? A. Yes, sir.

Q. That is a Democratic Club, is it not? A. I believe so.

Q. You know it, don't you. A. Yes, sir, I know it.

Q. It is an election club, isn't it? A. Yes, sir.

Q. Started and organized for the avowed purpose of electing Democrats to office? A. Yes, sir.

Q. And run for that purpose? A. Yes, sir.

Q. And you and Mr. Dinan and Mr. Sullivan are all members of it? A. Yes, sir.

Q. There was quite a trouble over there during the last election between the Confidence Club and the Ninth District Club, wasn't there? A. I don't know of any.

Q. The Ninth District Club is another club over in that district, isn't it? A. Yes, sir.

Q. You say you have never heard of any trouble? A. I may have heard of it, but I know of none.

Q. Did you hear of it? A. I have heard of it.

Q. What was the difficulty? A. I don't know. A mere matter of jealousy, I suppose. I don't know of anything else.

Q. During the time you were exercising yourself so vigilantly in behalf of the Democratic party, you were losing your time, weren't you? A. No, sir.

Q. Your time ran on just the same, did it? A. This was in the evening this occurred.

Q. Then you only watched in the evening; you did not watch in the daytime? A. I watched in the day.

Q. During the daytime, did your time run along just the same? A. Yes, sir.

Q. You got your wages just the same, just so long as you were working in the interests of the Democratic party? A. Just such time as I could be off.

Q. And you could get off and be looking out for the interests of the Democratic party; you were sent by Max Popper to look after the interests of the Democratic party over there? A. Yes, sir.

Q. And you got your wages just the same whether you were over there looking after the Democratic party's interests, or whether you were managing the engine? A. I was managing the engine.

Q. How could you do that when you were over there looking after the ballots? A. I was over there. I was over there during the night.

Q. I thought you said you were there during the whole time that the ballots were counted? A. I couldn't do that. I would have to have some sleep. I was either asleep or at work.

Q. How much of the time did you work? A. I guess I worked the same as I always did.

Q. Tell me what you did? A. I can hardly recall. I did not make any mental note of that kind; I cannot recall positively when I was there and when I was not.

Q. You did not lose any time at all? A. No more than I am to-day.

Q. Are you losing your time to-day? A. No. I should be, but to-day I got permission to come off.

Q. That is what you did when the election occurred? A. No. I did not get off except when I could be off. I went away in my leisure hours.

Q. What position are you promised by Mr. Sullivan as the result of your active participation in this election? A. None whatever. He has not given me a promise, one way or the other, of any kind.

Q. You have not made up your mind what position to take? A. I don't know that it would do me any good if I did.

Q. And you don't think Mr. Sullivan is at all grateful, and that this help will make him at all grateful to assist you to get anything to do? A. I think anybody else would do just the same as long as he is a Democrat.

Q. You are a Democratic officeholder? A. Yes, sir.

Q. Drawing your salary by reason of Democratic appointment? A. Yes, sir.

Q. And then your active participation does not partake altogether of disinterestedness? A. No, sir.

By MR. CLUNIE: You are not a free charity giver? A. No, sir.

[Here a recess was taken until 2 o'clock P. M.]

AFTERNOON SESSION—2 o'clock.

FRANK E. DORAN.

A witness on behalf of contestant, was sworn, and testified as follows :

Direct Interrogatories.

By MR. CLUNIE: What is your business? Answer—Deputy Sheriff.

Q. Where do you reside? A. 807 Union Street.

Q. How long have you resided there? A. About a year.

Q. Did you reside there about the time of the last election? A. Yes, sir.

Q. What precinct is 807 Union, of the Assembly District? A. Where I reside is, I believe, the fifth precinct.

Q. On election day did you stay in any precinct? A. In the Sixth of the Thirty-third.

Q. Were you there all day? A. Yes, sir.

Q. Do you know a gentleman by the name of Lynch? A. I do.

Q. J. D. Lynch. Do you know him? A. I know a man by the name of James Lynch.

Q. Is he in the Court-room? A. No, I don't see him.

Q. On the day of election where was James Lynch? A. He was in the Sixth of the Thirty-third. He was a Clerk of the Board, I believe.

Q. Do you know Mr. Banks, the gentleman sitting here [indicating the respondent]? A. No, sir. I never spoke to the man in my life.

Q. Did you know the fact that a man by the name of Banks was a candidate for Senator from the Twenty-first Senatorial District? A. I did; yes, sir.

Q. Did you have any conversation with Lynch regarding Mr. Banks, on the day of election? A. I had a few words with Lynch.

Q. Tell us what that was? A. Regarding Mr. Banks. I went to Lynch and asked him if he wouldn't vote for a friend of mine, Mr. Sullivan, and

he said no, he would not, but he was for Banks. He said, "I have the Democratic ticket, but I have got Banks' money, and I am here to work and to buy votes for him."

MR. CLUNIE: I object to people sitting here and laughing at witnesses.

JUSTICE STAFFORD: Neither of us noticed anything. Proceed.

By MR. CLUNIE: That occurred in the Sixth Precinct of the Thirty-third Assembly District, in this city and county? A. Yes, sir.

Q. Was Mr. Lynch there at the election precinct? A. He was there all day.

Q. What doing? A. A part of the time he was clerking; very little clerking, but most of the time he was outside.

Q. What doing? A. Electioneering outside.

Q. Talking to voters? A. Oh, yes, sir; any man that he could get to vote for Banks he would take them around the corner and try and take them up to the polls.

MR. DORN: We move that so much of this matter as related to the conversations between Mr. Lynch and the witness on the stand, which we had no opportunity to object to, not knowing what would be the response—we move that so much as relates to the conversation be stricken out as hearsay, and not competent evidence. There can be no ruling and we have to rest with the motion.

Cross Interrogatories.

By MR. DORN: Where do you reside? A. No. 807 Union Street.

Q. You are a Deputy Sheriff, you say? A. Yes, sir.

Q. At the present time? A. Yes, sir.

Q. Were you on the Board of Election over there? A. I was not.

Q. What were you doing over there? A. I was stationed in that precinct. I live in that precinct, and have for twenty-five years.

Q. Who stationed you there? A. I was stationed by the County Committee. I was ordered to take charge of that precinct.

Q. By what County Committee? A. The Democratic County Committee.

Q. Were you stationed there in the Sixth Precinct of the Thirty-third District by order of the Democratic County Committee? A. Yes, sir.

Q. How long have you known Mr. Lynch? A. I have known him, I guess, fifteen or eighteen years.

Q. When you approached him and asked him to vote for your friend Sullivan, you say he refused to do so? A. Yes, sir.

Q. Of course he understood that you were working for Sullivan, didn't he? A. Yes, sir.

Q. Didn't it strike you as very singular that he should tell you these things if he knew you were against him? A. No; he was a friend of mine. I have befriended him; I have done him a couple of favors, and I asked him as a personal favor to vote for Sullivan. He said, "I am not going back on Banks." He said, "I am not going to put him in the hole; I have got his money, and I am going to vote for him."

Q. Who was present at the time of this conversation? A. Nobody was present. He called me in the saloon on the corner.

Q. No one was present? A. No, sir.

Q. Corner of what? A. Corner of Pacific and Mason.

Q. Then this conversation took place? A. Yes, sir.

Q. Nobody else was within hearing? A. No, sir.

Q. He told you he was not going back on Banks; he had Banks' money? A. Yes, sir.

Q. That was all he said? A. Yes, sir.

Q. You are positive of that? A. Well, there was a little more conversation there.

Q. You had a little general conversation? A. Yes, sir.

Q. Were you a member of the Confidence Club? A. No, sir.

Q. Are you a member of the Ninth District Club? A. No, sir; I am not. I never signed my name to it.

Q. What do you mean, you never signed your name? A. If I am a member, I never signed my name to it.

Q. Is that the same way you are a member of the Confidence Club? A. No, sir; I am not a member of the Confidence Club nor the Ninth District.

Q. Why do you say you never signed your name to it? A. Well, I don't know. Maybe somebody else signed my name to it, if I am a member, and I don't know it.

Q. Did anybody else sign your name? A. That I don't know.

Q. Do you know whether anybody else did or not? A. No, sir; I do not.

Q. Don't you know, as a matter of fact, that Mr. Lynch, this gentleman you speak of, is a member of the Morrow Invincibles, and a Republican?

A. No, sir; I do not; and I know him always to be a Democrat.

Q. Do you know what his politics were during the last election? A. He told me he was for the Democratic ticket, except he was for Banks.

Q. Don't you know, as a matter of fact, he belonged to the Morrow Invincibles? A. No, sir.

Q. Don't you know that he was serving as a member of the Board of Election as a Republican? A. He came to me and asked me if I would put him in there as an officer of the Precinct Board of Registration, and I told him no, I couldn't, and he said he would go somewhere where he could get it.

Q. Are you a member of the County Committee? A. Yes, sir, I am.

Q. And you were over there as a member of the Democratic County Committee that day? A. Yes, sir.

Q. And everybody knew, and Lynch knew you were a member of the Democratic County Committee? A. Yes, sir.

Q. Did you employ men to work for the Democratic ticket on that day? A. I believe I employed two.

Q. Who? A. Mr. Matteson.

Q. Where does he live? A. I don't know.

Q. What is his first name? A. James, I think; I ain't sure whether that is his name.

Q. What is the other man's name? Was it such a common matter for you to employ men to work on election day that you cannot remember their names? A. I can't remember—

Q. [Interrupting.] How many men did you employ on election day? A. I employed two or three, and Mr. Kenney—

Q. [Interrupting.] You had nothing to do but the one precinct? A. No, sir.

Q. Who was Mr. Kenney? A. He was in the precinct along with me.

Q. Who for? A. He was a Democrat.

Q. Was he sent there for the Democratic County Committee? A. No, he was not sent there specially by the Democratic County Committee.

Q. By whose authority did you employ these men? A. I asked him. He had a couple of friends there and asked me if I would put them to work.

Q. Then you did not have enough men to fill the places and Mr. Kenney suggested that? A. I suppose I had enough, but I did it as a favor to him.

Q. How long did those men work? A. From the time the polls opened until they closed, I believe.

Q. Until after the votes were counted? A. Just during the polls being open on election day.

Q. How much did you pay those men? A. I decline to state.

Q. I ask you how much you paid those men for their work? A. I decline to answer unless the Court tells me to do so.

MR. CLUNIE: You decline to answer on the ground that you are divulging the secrets of the Democratic County Committee?

MR. DORN: The witness states he employed men to work at the Sixth Precinct of the Thirty-third Assembly District, on election day, and I ask him how much he paid them?

MR. CLUNIE: And I instruct the witness to decline to answer the question, on the ground that he is divulging the secrets of the Democratic County Committee, which he is not empowered to do.

THE COURT: The witness will answer the question. A. \$5.

By MR. DORN: \$5 each, or for the whole lot? A. \$5 a man.

Q. Who paid that money to them? A. I did.

Q. When did you pay them? A. I paid them the night the polls closed.

Q. You paid each man \$5? A. I did not pay them all. I paid my men and Kenney paid his men.

Q. But you gave him the money to pay his men? A. Yes, sir.

Q. Those men were there all the time from the opening to the closing of the polls, you say? A. Yes, sir.

Q. Working for the Democratic County Committee? A. Yes, sir.

Q. Where did you get the money from? A. I decline to answer.

THE COURT: Answer the question. A. I got it from the Democratic County Committee.

By MR. DORN: How much did you get from Mr. Sullivan? A. I never got a dollar from Mr. Sullivan. I am not in the habit of taking money from candidates.

Q. I did not ask you what you were in the habit of doing. I asked you what you did. A. I haven't got a dollar from Mr. Sullivan.

Q. Mr. Sullivan did not give you any money? A. No, sir.

Q. Before or on election day? A. No, sir.

Q. But you got it from the Democratic County Committee? A. Yes, sir.

Q. And with that you hired these four or five or six men to work the Sixth Precinct? A. Yes, sir.

By MR. CLUNIE: You hired them to peddle tickets? A. Yes, sir.

Q. And watch the ticket? A. Yes, sir; and watch the ticket.

Q. And that was the only purpose for which you paid them? A. Yes, sir.

By MR. DORN: Do you know that at the time of election Mr. Banks, the respondent here, was a member of the Republican County Committee? A. No, sir; I do not know if he was a member of the Republican County Committee.

Q. Do you know who the member of the Republican County Committee for that district is? A. No, sir, I do not.

Q. You are not as well posted on the part of the Republican County Committee as you are on the Democratic? A. No, sir, I am not; I paid no attention to it.

Q. You say Mr. Lynch went around the corner with some voters. What corner do you mean? A. The polls were held within forty or fifty feet of a grocery store; right around the corner.

Q. What corner is that? A. That is on the northwest corner.

Q. How far is it from the polls to the corner? A. I guess about forty or fifty feet.

Q. It is within one hundred feet of the corner, is it? A. I guess it is.

Q. If a man wanted to talk to an elector, and didn't want to talk to him within one hundred feet of the polls, he would have to go in the other direction, or around the corner, wouldn't he? A. Well—yes, sir.

Q. If a man wanted to comply with the law, and not talk with a voter, he would have to go in that direction, or around the corner, would he not? A. Yes, sir.

Q. Around that corner is an open street, is there not? A. Yes, sir.

Q. And open to the public? A. Yes, sir.

Q. It was light on that day of election, wasn't it? A. Yes, sir. Sometimes around the corner, and sometimes they would go in the grocery store.

By MR. CLUNIE: If a man wanted to slip twenty-dollar pieces in a voter's hand, that would be a good place to do it? A. Yes, sir.

STEPHANO DEMARTINI.

A witness on behalf of contestant, was sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: What is your name? Answer—Stephano DeMartini.

Q. What is your business? A. My business is a bootblack.

Q. Where do you live? A. 718 Greenwich Street.

Q. What precinct is that in, do you know? A. The Thirty-fourth, or something; I don't know.

Q. Of what district? A. In the Senatorial District.

Q. Do you know Mr. Banks [indicating respondent]? A. Yes, sir.

Q. You had a little talk with him before you came in the Court-room, didn't you? A. I was talking to him outside.

Q. He asked you what you were doing here? A. He asked me what I was doing here, and I told him they subpoenaed me to come here.

Q. Did he talk to you about your testimony? A. That is all he said to me, what I was doing here; I told him I was subpoenaed to come here.

Q. Is that all he said? Are you sure of that? You are under your oath. A. I say the truth.

Q. Is that all he said? A. He didn't say anything else to me.

Q. He didn't say anything else about what you were going to testify? A. He asked me what I was going to testify, and I said, "I have got to testify to the truth."

Q. He objected to that a little, didn't he? A. I didn't hear.

Q. What else did he say? A. He didn't say anything else that I heard.

Q. Is that all he said? A. Well, I said, "I have got to tell the truth; I don't want to get in any trouble with nobody, only the truth."

Q. Did he tell you about any money or anything of that kind? A. No, sir.

Q. He did not tell you what you were to testify to? A. No, sir.

Q. And he didn't ask you what you were going to testify to? Didn't he ask you what you were going to say on the stand? A. No, sir.

Q. Didn't he tell you that he was a member of the Republican County Committee up there? A. I knew that.

Q. Didn't he tell you that out in the hall? He told you out in the hall that he was a member of the County Committee. Didn't you and Mr. Banks talk out in the hall a few minutes ago, and didn't he tell you that he was a member of the Republican County Committee? A. I knew that.

Q. Didn't he tell you that? A. No, he didn't say to me outside that he was a member of the County Committee.

Q. Did he say anything outside about a little conversation you and he had on election day? A. Outside there he told me—that was what he told me when I came here; he said, "What are you doing here?" I told him I was subpoenaed to come here.

Q. Then what did he say? A. He said, "What for?" I said, "I don't know."

Q. Then what did he say? A. I cannot talk very good English, you know.

Q. You have forgotten what he said to you. Did he tell you to forget what occurred on election day, too? A. What does that mean?

Q. Did Mr. Banks tell you to forget what occurred between you and him on election day? A. I didn't have any.

Q. You had a talk with him on election day, didn't you? A. Yes, I was talking with him on election day.

Q. Didn't he refer to that conversation out in the hall a while ago? A. He didn't say anything to me outside. Only he said to me, what was I doing around here, and I told him, and he said, "When you are on the stand say the truth."

Q. He told you that and went away? A. That is all he told me.

Q. Then he came back the second time? A. We were talking lots of times outside.

Q. You and he had two or three talks? A. Yes, sir.

Q. And that is all that occurred, and he asked you what you were doing here, you told him you were subpoenaed, and he said to say the truth, and that is all that occurred? A. That is all; he told me to say the truth.

Q. You knew Mr. Banks on election day, did you not? A. I knew Mr. Banks before election day.

Q. Where were you election day? A. I was there in the precinct.

Q. In what precinct? A. The Thirty-fourth, I think.

Q. Who were you there for that day? A. I was peddling tickets.

Q. For whom? A. For the Republicans.

Q. Who hired you? A. Mr. Banks hired me.

Q. When? A. He came to me two days before the election.

Q. He came to you a couple of days before the election, did he? A. Yes, sir.

Q. What did he say to you then? A. He told me if I wanted to peddle the Republican ticket; I told him yes.

Q. What else did he say? A. He said: "I will give you \$10 if you will leave your work to peddle the Republican ticket."

Q. He will give you \$10 if you will leave your work and peddle the Republican tickets? A. Yes, sir.

Q. He said that to you when? A. Two days before the election. He even told me one evening, and another gentleman by the name of Jackson, that belonged to the Morrow Invincibles.

Q. Give us the rest of it? A. That is all.

Q. He told you he would give you \$10 if you would peddle the Republican tickets? A. Yes, sir.

Q. And you told him you would do it? A. Yes, sir.

Q. Did you have any conversation with him again that day? A. I had lots of conversation.

Q. What did you do? A. He treated me two or three times.

Q. All that occurred between you and Mr. Banks on election day was, he treated you two or three times? A. Yes, sir; he treated me two or three times. I went down to another place, to his brother-in-law's, that I know.

Q. What did you go down there for? A. I went down there to see some Italians—some friends that I know.

Q. What did you go down there for? A. To work the Republican tickets.

Q. Didn't you go down there and ask them to vote for Mr. Banks? A. No, sir.

Q. You went to work the Republican ticket? A. Yes, sir.

Q. And for nobody in particular? A. No, sir.

Q. Are you sure of that? A. Certainly, I am sure.

Q. Banks told you two days before election, if you would go down there election day and peddle Republican tickets, he would give you \$10? A. Yes, sir.

Q. Did he tell you he would give it to you afterwards? A. No, sir; he gave me \$10 election day morning.

Q. What was said then? A. He told me to peddle Republican tickets.

Q. You had some talk with some gentlemen up there after that \$10 was given to you, didn't you? A. What gentlemen?

Q. With two or three gentlemen that were present in that precinct? A. I had lots of them.

Q. Didn't you talk with them with regard to this transaction that you had with Mr. Banks? Didn't you talk with them about him giving you money? A. Not as I know. I don't know.

Q. Do you know this gentleman here [indicating Mr. Maxwell]? A. Yes, sir.

Q. You saw him on that morning, didn't you? A. Yes, sir.

Q. Mr. Maxwell was there that day, was he not? A. Yes, sir.

Q. He saw this man give you the money, didn't he? A. I don't know if he did or not.

Q. Don't you know he was standing right there near and saw it? A. I don't know if he saw him give it to me. I said, myself, he gave me \$10.

Q. You told him he gave you \$10. Do you remember seeing Mr. Maxwell up in the Fifth Precinct or the Third Precinct of the Thirty-fourth District that day, immediately after Mr. Banks had handed you some money? Didn't you say to Mr. Maxwell that Mr. Banks had given you \$10 to work for him? Didn't you say that to him and another person, and in the presence of Mr. Maxwell, and Mr. Capello, and Mr. Dondero, didn't you tell them then that Mr. Banks had given you \$10 to work for his interests on election day? Just answer that. A. Yes, I said that he gave me the \$10 for me to work for the ticket.

Q. To work for Mr. Banks; didn't you say that? A. That might have slipped out.

Q. You think if you made that statement it might have slipped out: is that it? A. Yes, sir.

Q. Don't you know that that is the fact, and that the only reason you have made the statement about peddling tickets is that Mr. Banks told you to do so a few moments ago out in the hall; isn't that the fact? A. No; Mr. Banks came to me two days before to peddle the tickets; that is true.

Q. That is not what I asked you. I asked you if the statement was, when Mr. Banks gave you the \$10 he said to work for him for that, and was that a true statement of the business? A. He did not say to work for him. I was working the Republican tickets; and even another man, Buckley, was there.

Q. Buckley was working the Republican ticket, was he not? A. Yes, sir.

Q. And Mr. Buckley paid you for working the Republican ticket, did he not? A. Yes, sir.

Q. You got paid for working the Republican ticket from Buckley, did you not? How much did you get from Buckley? A. From Buckley I think it was \$2 50.

Q. What did Mr. Buckley give you that for? A. To stay there with the tickets.

Q. Mr. Buckley was the man that told you about the tickets, was he not? A. Yes, he told me to.

Q. And he agreed to pay you \$2 50 a day to stay there? A. He told me he would give me \$2 50 to stay there.

Q. Don't you know that that is all they gave you, and that Mr. Banks gave you this \$10 to work for him, and didn't you state that to the three parties I just asked you about, and didn't you state it to-day, and didn't you just change your mind when Mr. Banks got you out in the hall there? Isn't that the fact, and don't you know that that is the fact? Didn't Mr. Banks say, "Take that \$10 and work for me on election day?" Is that the fact or not? Didn't Mr. Banks say, "Take this \$10 and work for me?" Didn't that occur on election day morning in the Third Precinct of the Thirty-fourth District? Answer the question? A. Yes, he gave me \$10 to work.

Q. To work for him, didn't he, and didn't you so state to these parties? Did he or did he not? A. What?

Q. Didn't he give you \$10 to work for him? Ain't that what he said? A. Yes, he gave me \$10.

Q. Didn't he say to work for him? A. He told me to work for the ticket and at the same time, I suppose, to work for him.

Q. Don't you know he said that when he gave you the \$10, and isn't that all of it, and isn't it the fact? I want to get a direct answer from you now whether Mr. Banks said that or not? If he said it, say so? A. He told me, "Here is \$10; go and work."

Q. "Go and work?" A. "Go and work for the Republican ticket," and I did go.

Q. Didn't he say to work for Banks, too? A. Wasn't he on the ticket?

Q. Just answer this question, yes or no; did Banks state to you when he handed you this \$10, that he wanted you to go and work for him; answer that, yes or no? A. Yes, he told me to work for him, and it would be for the Republican ticket.

Cross Interrogatories.

By MR. DORN: Did he say to work for him, or did he say to work for the Republican ticket? A. He told me to work for him and to work for the whole Republican ticket.

Q. Do you know whether Mr. Banks, at the time of election, was a County Committee man? A. Yes, sir, I do; he came to me two days—

Q. [Interrupting.] Was he a member of the Republican County Committee? A. Yes, sir.

Q. As a matter of fact, the Republican County Committee and the Democratic County Committee both employed people on the day of election to look out for the tickets and work for the ticket, did they not? A. Yes, sir.

Q. In what capacity did Banks employ you to work for the ticket: as a private individual, or as a member of the Republican County Committee? A. He came to me two days before election, like I said all the time; he engaged me two days before to work.

Q. Did he give you this \$10 to work for Banks, or did he give you this \$10 to work for the whole Republican ticket? A. When he gave me the \$40 he said: "You do all you can to try to work for the Republican ticket, and at the same time if you can, get some votes for me too." That is what he said.

Q. Did you ever bribe anybody to vote the Republican ticket? Did you ever bribe any body to vote for one ticket or against another? A. I don't understand.

Q. Did you ever offer anybody money to vote for a ticket? A. No.

Q. Did you ever give anybody any money to vote for a ticket? A. No.

Q. Did you ever give anybody any money to hire them to vote for one ticket or against another? A. No, sir.

Q. Did you ever hire anybody or give them anything to induce them to vote for Mr. Banks? A. No, sir.

Q. Or against Mr. Sullivan? A. No, sir; I didn't give them any money.

Q. If you worked for the ticket, how did you work for the ticket? Did you hire people—give them money—or did you just talk to them? A. Just talked to them if they wanted to vote the ticket; that is all.

Q. And that is the way you worked the ticket? A. Yes, sir.

Q. And in that way you looked out for the Republican ticket—to see if they wanted to vote the Republican ticket—that they had it? A. Yes, sir.

Q. You did not bribe anybody or give anybody any money, or drinks, or anything to hire them to vote, did you? A. No, sir.

Q. You did not? A. No, sir.

Q. Was this money given to you to buy your vote? A. No, sir.

Q. Was it given to you to buy anybody's else vote with? A. No, sir: he just gave me that for my work.

Q. He just gave you that for your work and your time? A. Yes, sir.

Q. As a member of the Republican County Committee? A. Yes, sir.

Q. The arrangements were made by Mr. Banks with you to peddle the tickets on election day, two days before election day, were they? A. Two days; yes, sir.

Q. Did Mr. Sullivan ever treat you about election time? A. No, sir.

By Mr. CLUNIE: In consideration of this gift or this \$10, you did work for Mr. Banks and for the Republican ticket, didn't you? A. Yes, sir.

By Mr. DORN: You did not work for Mr. Banks specially; you worked for the whole ticket? A. Yes, sir.

Q. Are you a member of any political club? A. Yes, sir.

Q. What club? A. The Morrow Invincibles.

Q. You are a Republican then, are you? A. Yes, sir.

Q. And were a Republican at the time of the last election? A. Yes, sir.

Q. And a member of the Morrow Invincibles? A. Yes, sir.

Q. The Morrow Invincibles is a political organization composed entirely of Republicans, is it not? A. Yes, sir.

Q. And at the last election the effort of that club was to elect the Republican ticket, was it not? A. Yes, sir.

CHARLES MURRAY.

A witness in behalf of contestant, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: What is your full name? Answer—Charles Murray.

Q. Where do you reside? A. 330 Greenwich Street.

Q. What precinct and what district is that? A. In the Second.

Q. Of the Thirty-fourth? A. The Thirty-third.

Q. Where did you live at the time of the election? A. Northwest corner of Filbert and Montgomery.

Q. What district is that in? A. Thirty-third, I think.

By MR. DORN: Do you know? A. I do not know.

By MR. CLUNIE: Where were you about the time of this election? A. I was all over the hill.

Q. At the time of this election you lived in the Twenty-first Senatorial District, didn't you? A. Yes, sir.

Q. Do you know a gentleman named Leale? A. Yes, sir; I know a gentleman by the name of Leale; that is all the name he gave me.

Q. Did you have any conversation with him before this election? A. Yes, sir.

Q. You had a conversation with him, did you? A. Yes, sir.

Q. Where was that conversation? A. On the Fisherman's Wharf.

Q. Where is that? A. That is on the sea-wall between Filbert and Union.

Q. That is in this city and county, is it not? A. Yes, sir.

Q. You had a conversation with him, you say? A. Yes, sir.

Q. When was that? A. The day before election.

Q. That was the fifth of November. A. Yes, sir.

Q. Of last year? A. Yes, sir.

Q. Did he state to you —

MR. DORN: [Interrupting.] We are certainly entitled, before that question is asked, to know who was present. Was anybody present when you and he had this conversation? A. Yes, sir; there was a little boy standing close by. That is all.

Q. Did Mr. Leale tell you who he was? A. Yes, sir.

MR. DORN: We object to that conversation as hearsay.

MR. CLUNIE: You have the general objection on all grounds, as I understand it.

Q. Did he tell you who he was? A. Yes, sir.

Q. You know W. O. Banks, don't you? A. No, sir, I didn't ever see the man.

Q. Did he state that he bore any relationship to W. O. Banks? A. Yes; brother-in-law.

Q. Did he have any conversation with you in regard to Mr. Banks? A. Yes, sir.

Q. State that conversation. A. He came down and asked me whether I was Murray's brother. I told him yes, and he asked me could I get a couple of young fellows to work for him on election, and I told him I would do a little myself for him, and he said, "All right; don't you forget my brother-in-law, W. O. Banks," and passed me \$5.

Q. You say when he first came he said he wanted some young man to do some work? A. First he asked me if I was Murray's brother, and I told him yes, and he asked me if he could get a couple of young men to work for him

to-morrow, election day, and I told him I would do some, and he said, "Don't you forget to do something," and he said, "Don't you forget my brother-in-law, Banks," and he handed me \$5. Then he showed me a book with the names of some more different people.

Q. What were the names of those people? A. He asked me where — was and some other Italians, and I told him to go up to Vallejo Street.

Q. And that is all he asked you to do? A. Yes, sir.

Q. And you got the \$5? A. Yes, sir.

Cross Interrogatories.

By MR. DORN: Did he ask you to vote for Banks? A. Yes, sir.

Q. I thought you said he said not to forget him? A. That is what he meant.

Q. You tell me what he said, and don't tell what he meant. What did he say? A. He told me not to forget Banks.

Q. That is all he said? A. Yes, sir.

Q. And he gave you \$5? A. Yes, sir; he did.

Q. Did he ask you to vote for Banks? A. Well, it was just as much.

Q. Did he ask you to vote for Banks? A. No.

Q. Did you understand and consider that that \$5 bought your vote? A. Well, I guess it pretty near bought it.

Q. Did you understand that your vote was bought for that \$5? Did you sell your vote for that \$5? A. No, not exactly sold the vote for \$5.

Q. Did you understand that your vote was being bought with that \$5? A. I don't know about that.

Q. Did you understand that you were selling your vote for \$5? A. No, sir.

Q. Did you understand you were being bribed to vote for Mr. Banks with that \$5? A. I understood this, Captain was looking for me to vote for him, and getting my friends to vote for him.

Q. Did you understand you were being bribed by the \$5 piece? You accepted the \$5 piece did you? A. Certainly.

Q. Did you understand you were being bribed by that \$5 piece? A. No, sir; I didn't have to.

Q. He asked you to work for Banks on election day, did he? A. Yes, sir.

Q. And not to forget him? A. Yes, sir.

Q. What you understood by the receipt of the \$5 was, that in consideration of that \$5 you were to work on election day? A. Yes, sir.

Q. For the Republican ticket? A. Certainly.

Q. You did not understand that he was buying your vote, or that you were capable of selling your vote, did you? A. I suppose that was what he was giving me the money for.

Q. The money was to be given to you, to work for the Republican ticket, wasn't it? A. No, I didn't work for the Republican ticket.

Q. What did you do? A. I just voted for him; that is all. He ain't no Republican.

Q. Did you go around with that \$5 and buy anybody else to vote for him? A. No, sir.

MR. DORN: Let me see the Code, if your honor please.

MR. CLUNIE: Don't be afraid of Mr. Dorn, Mr. Murray. He won't hurt you, and I will instruct you not to answer any questions that will criminate you.

By MR. DORN: Where do you work? A. No. 330 Green Street.

Q. Where do you work? A. Boatman.

Q. Whereabouts? A. Fisherman's Wharf.

MR. CLUNIE: There were some other reasons, weren't there, that induced you to give your vote to Banks? A. Yes, sir.

Q. You have a brother in San Quentin, haven't you? A. I had a brother over there at that time.

Q. Did you receive a letter from him requesting you to vote for Mr. Banks? A. No, sir, I did not; but my brother did; and my name was in it and my cousin's name was in it.

Q. Where does your brother live? A. He lives corner of Montgomery and Filbert.

Q. He lives in the Twenty-first District? A. Yes, sir.

Q. You say he received a letter requesting him to vote for Mr. Banks? A. Yes, sir; to him and me and my cousin to vote for Mr. Banks.

Q. Did you get that letter? A. No, sir.

Q. You saw it, did you? A. Yes, sir.

Q. State, as near as you can, what that letter said. A. I couldn't state until I get the letter.

Q. Did he say anything about you in the letter? A. Yes, sir; it said for him to do something for Banks: to get me and my cousin.

Q. Did it ask you all to vote for Banks? A. I couldn't say that it did. I only just looked at the letter once, a week ago.

Q. You have not the letter now? A. No, sir.

Q. That was one of the reasons that induced you to vote for Banks, was it not? A. Yes, sir. I never knew none of them until they sent it over.

Q. This \$5 the Captain gave you had no effect on you, had it? A. No, not in one way.

Q. But you intended to vote for Banks anyhow? A. Yes, sir.

Q. You voted for him on account of this letter, as I understand it. A. Yes, sir.

By MR. DORN: You say the \$5 had no effect upon you at all? A. No.

Q. You didn't do anything on account of the \$5; is that what I understand you to say? A. No, I didn't do anything for the \$5.

Q. You say you saw this letter from your brother about a week ago? A. Pretty nearly a week ago. It is inside a week anyhow.

Q. Is that the first time you had seen it? A. I never saw the letter, but my brother just came down.

Q. You stated you have just seen the letter. A. Not when it came over.

Q. When did you see the letter? A. Three or four days ago.

Q. Then how did you know that it was received before election? A. I know it from my brother.

Q. What is his name? A. John Murray.

Q. What did he tell you: that he had received such a letter? A. He come down to me and passed some cards of Banks' to me, and to do all I could for and to vote for Banks.

Q. All you know is that your brother told you he had got a letter? A. No, sir. He has got two letters.

Q. And you only know your brother told you so? A. Yes, sir.

Q. Where is your brother now? A. I don't know if he is outside or where he is.

Q. Where is the brother that wrote the letter? A. He is in jail.

Q. Where? A. In the City Hall.

Q. He served the term out in San Quentin, did he? A. Yes, sir.

Q. And he is now in jail again? A. Yes, sir.

Q. What for? A. I don't know; battery, or something; attempt to rob.

Q. This is the one that wrote you the letter? A. Yes, sir.

Q. You say you saw Maxwell on election day, this gentleman right here next to Mr. Clunie [indicating]? A. I don't know; I don't remember whether I saw him or not; I didn't say I saw him.

Q. Do you know a gentleman by the name of George Maxwell? A. Yes, sir, I know him.

Q. Did you see him on election day? No, sir.

Q. You did not? A. No, sir.

Q. Where were you on election day? A. That is hard to tell; I was all over; I was up on the hill, on the wharf, and all over.

Q. What were you doing? A. I was riding around in a wagon.

Q. Who was driving the wagon? A. I decline to answer all that.

THE COURT: Answer the question. A. There was a fellow named Dick Den driving the wagon.

Q. What were you driving around in the wagon for? A. Just for fun; to have a ride.

Q. How many precincts did you vote in on election day? A. Just in one.

MR. CLUNIE: You need not state that. You need not state how you voted.

MR. DORN: I don't ask him how he voted.

Q. How many precincts did you vote in on election day? A. Only one; that is all.

Q. Who is this Den that was driving the wagon that you were riding around in for fun all day? A. He is a saloon keeper or bartender.

Q. What are his politics? A. That is more than I know.

Q. Don't you know that his saloon is Sullivan's headquarters? A. No, I can't say that, for I have not been in his saloon five times.

Q. Don't you know that on the day of election and up until the day after election, Mr. Sullivan's name was across the window? A. No, sir, I cannot swear that.

Q. Have you ever been in that saloon before election? A. I might have once or twice, but not any more.

Q. Who were you with when you were in there? A. I can't say; I can't remember.

Q. Do you know Mr. Sullivan here [indicating contestant]? A. No, sir, I never knew or saw the man before. The day of election I saw him in a buggy and he was pointed out to me.

Q. And you never saw him before? A. No, sir.

Q. Where was he on the day of election when you saw him? A. Corner of Dupont and Union, I believe.

Q. What was he doing? A. Talking to some gentlemen there.

Q. He was in the buggy? A. Yes, sir.

Q. Did he get out of the buggy? A. I didn't stop to watch.

Q. You and Den went on somewhere else, did you? A. Yes, sir.

Q. And you don't know that Den's saloon was Sullivan's headquarters during this last campaign? A. No, sir.

Q. You don't know anything about it? A. No, sir.

Q. What did you do all day, riding around for fun up and down Telegraph Hill? Wasn't that rather a curious place to take a buggy ride? A. We were in a two-horse wagon.

Q. Just riding up and down hill all day for fun? A. Yes, sir.

Q. You took the team out at noon and gave them a rest for awhile, didn't you? Did you stop at noon? A. I don't know whether we did or not.

Q. What did you do? Did you just ride up and down that hill all day?

A. Not all day. I was in the wagon from about 10 o'clock until about 4.

Q. What were you doing? Did you sit in the wagon all that time? A. Yes; sit in and get out.

Q. Then there was some of the time you did not sit in the wagon? What did you do when you got out of the wagon? A. I was drinking beer.

Q. That is the way you amused yourself on election day? A. Yes, sir.

By MR. CLUNIE: You say you had a conversation with your brother who got this letter from San Quentin, in which he asked you to vote for Mr. Banks? A. Yes, sir.

Q. Did your brother tell you that it would be to the interest of your brother in San Quentin to vote for Banks? A. Yes, sir.

Q. He told you he had been so informed by the officers in San Quentin? A. Yes, sir.

By MR. DORN: How long after election day did your brother's term expire in San Quentin? A. I couldn't say that, sir.

Q. As a matter of fact, wasn't it just two days after election that your brother's term expired in San Quentin? A. I don't know if it was two, or four, or six.

Q. Wasn't it just two? A. I don't know.

Q. Will you swear it was not two? A. No; I wouldn't swear to any.

Q. If his term was to expire in two days more, can you tell me how the officers in San Quentin would help him to get out?

MR. CLUNIE: He did not say that.

Q. You did not say that he would help him to get out, did you? A. No, sir.

Q. You said your brother said it would be to his interest? A. Yes, sir.

Q. They could very easily beat a man to death over there in a couple of days, couldn't they? A. Yes, sir.

E. E. SCHMITZ.

A witness on behalf of the contestant, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Mr. Schmitz, where do you reside? Answer—No 1413 Pacific Street.

Q. What is your full name? A. Eugene E. Schmitz.

Q. How long have you lived there? A. About eight years.

Q. That is in what precinct of what district? Do you know the Assembly District that that is in? A. No, I do not.

Q. Is it in the Thirty-fourth? A. Forty-first Senatorial District.

Q. The Forty-first? A. The Forty-first.

Q. Senatorial District? A. Senatorial.

Q. Where did you say it was? A. Pacific Street.

Q. Pacific and what? A. A little below Hyde.

Q. It is the Forty-first Assembly District, isn't it? A. Forty-first Assembly.

Q. Where were you on election day? A. On election day I was in the Seventh Precinct of the Thirty-third District.

Q. What were you doing there? A. I was there in the interest of the Democratic party, appointed by the County Committee.

Q. Who were the Board of Election in that precinct, do you remember? A. I do not.

Q. That was the precinct where Jones was, was it not? A. The same precinct.

Q. He was a Republican Inspector that day? A. I believe so.

Q. They had Clerks in addition to that, didn't they? A. I believe so.

Q. Do you know who the candidates were for Senator that day? A. Yes, sir; I do.

Q. Who were they? A. Banks and Sullivan.

Q. W. O. Banks and J. J. Sullivan? A. W. O. Banks and J. J. Sullivan.

Q. How long were you there? A. I was there from a quarter past six in the morning until half-past three the next morning.

Q. Were you there during the time the votes were being counted? A. I was there during that time.

Q. That was the first night? A. That was the first night.

Q. Did you see anything peculiar going on in that precinct with regard to Sullivan and Banks, or with regard to the votes, or any error? A. The peculiarity I saw there was the error altogether in Sullivan's name being called and the Clerk putting it down to Banks, and calling his attention to it, and it was rectified afterwards.

Q. How often did that occur? A. I believe three or four times.

Q. While you were there? A. While I was there.

Q. The Republican Clerk did it? A. Yes, sir.

Q. You saw him tally the vote for Banks? A. It happened three or four times.

Q. While you were there? A. While I was there.

Cross Interrogatories.

By MR. DORN: How did you happen to be there on that day? A. I came there by appointment.

Q. Who appointed you? A. The Democratic County Committee, through Mr. Dykeman.

Q. The whole Democratic County Committee did not appoint you? A. I said through Mr. Dykeman.

Q. Mr. Dykeman testified here on the stand this morning, didn't he? A. I believe so.

Q. Isn't Dykeman a member of the County Committee? A. That I don't know.

Q. He hired you on that day, did he? A. He hired me on that day.

Q. What did he tell you he wanted you to do? A. To look out for the interests of the Democratic party.

Q. Is that the precinct where Mr. Dykeman was active? A. I believe so; yes, sir.

Q. This Mr. Dykeman who is engineer down in the Appraiser's building? A. The same man.

Q. What were you paid for your services? A. I decline to answer; I think that is a private matter.

THE COURT: Answer the question. A. I was paid \$10.

By MR. DORN: The price was raising then in that precinct? A. I don't know anything about that.

Q. You were paid \$10 for your services? A. I was paid \$10 for my services.

Q. What were you there for? A. As I said before, to look out for the interests of the Democratic party.

Q. And whatever was necessary to look out for the interests of the Democratic party you were expected to do to the best of your ability? A. Yes, sir; exactly.

Q. You were there during election day? A. I was there during election day.

Q. What did you do during election day? A. During election day I took care of tickets and of our interests.

Q. Did you talk with any voters and try to persuade them to vote the Democratic ticket? A. I decline to answer that.

Q. I would like to have that answered.

THE COURT: Answer it. A. I did.

By MR. DORN: About how many? A. I can't recollect how many.

Q. A good many? A. Well, a few.

Q. You tried to get everybody you could to vote the Democratic ticket? A. Exactly.

Q. How long have you known Mr. Sullivan? A. I don't know the gentleman at all.

Q. Are you a member of the Confidence Club? A. I am not; nor any other Democratic or political club.

Q. You simply went there because you were to get \$10 to work for the Democratic party? A. Exactly.

Q. And during the day you button-holed everybody you thought you could have any influence with, to come there to vote the Democratic ticket? A. I did.

Q. Where did you take them, right around the corner? A. No.

Q. Within one hundred feet of the polls? A. I don't think it was.

Q. There was a place marked there every one hundred feet, wasn't there? A. I think so.

Q. Don't you know so? A. I know so; yes, sir.

Q. You restrained your conversation inside the one hundred foot limit, and did not talk with them until they got outside the one hundred foot limit, did you? A. When I was talking to gentlemen, or electioneering, I was outside of the limits.

Q. You know, as a matter of fact, that one Clerk was a Republican and one was a Democrat, don't you? A. Exactly.

Q. When these mistakes occurred, did the Republican and the Democratic Clerks agree in their tally? A. At this time they were not calling off; that is, one Clerk was not calling off what the other had.

Q. But he was calling off what he had himself, was he not? A. No; he was not at that time.

Q. They were not calling back to each other? A. The Republican clerk was calling.

Q. And the Democratic Clerk was not? A. And the Democratic Clerk was not.

Q. When the Republican Clerk called back his tally did it agree with the Democratic tally? A. That I don't know. I know it didn't agree with what I saw.

Q. But did it tally with the Democratic Clerk's? A. That I don't know.

Q. You discovered a mistake, you say? A. I discovered a mistake of two or three.

Q. How many were there? A. I will swear that there were at least three.
 Q. Will you swear that there were four? A. I will not swear that there were four.

Q. Whenever a mistake was discovered it was rectified, was it not?
 A. Yes, sir; that is, while I was there.

Q. Were those the only mistakes that were made while you were there?
 A few votes on Banks? Weren't a number of other mistakes made in regard to other votes? A. Certainly.

Q. For other officers? A. Yes, sir.

Q. Weren't there as many as three for other offices, during the time you were there, mistakes made calling back and forth, and one would say, "That is wrong" or "This is the way," and the mistake would be rectified? A. For any single office, no.

Q. About how many were there for any single office? A. I don't know.

Q. There were a good many, weren't there? A. There might have been a few.

Q. And if any mistake was discovered it was rectified? A. Exactly.

Q. Was Mr. Dykeman there? A. He was there part of the time I was there.

Q. Were you present when the mistake occurred that he testified about when there was one vote called wrong for Banks when it should have been Sullivan, and that he called his attention to it? He testified that a mistake was made in the tally and one vote for Sullivan was wrongly given to Banks, and that he called attention to it and it was rectified. Were you present at that time? A. I don't remember. I may have been. I don't remember the occurrence.

Q. You were present during the time he was there, were you? A. I was present, as I say, on that day. I don't know what time he was there. He was there off and on, and not all along.

Q. What was Mr. Dykeman's condition as to sobriety on the night of election? He was pretty drunk, wasn't he? A. He was not; no.

Q. Wasn't he under the influence of liquor? A. I was not looking who was under the influence of liquor.

Q. You were not any too sober yourself, were you? A. I was sober myself; yes, sir.

Q. Hadn't you any drink that day? A. I had taken a drink, certainly. I don't abstain from liquor.

Q. Weren't you feeling pretty good yourself? A. I always feel good.

Q. On this occasion it was superinduced by a good many drinks, wasn't it? A. It was not.

Q. What was Mr. Dykeman's condition as to sobriety, I asked you? A. To the best of my knowledge, he was sober.

Q. He might have had on what we call a still drunk? A. I don't know what you call a still drunk. I have never been on a still drunk, so I don't know.

Q. Did you see, during the time you were there, anybody handle the ballots except the election officers? A. I am not sure who were the election officers.

Q. Did you handle the ballots at all? A. I did not.

Q. After they were on the string did you see Mr. Dykeman handle them? A. I did not.

Q. If he testified that during the time you were there he handled and counted some over, he testified falsely, did he? A. No, sir.

Q. Then he testified truthfully, did he? A. He may have handled some of the ballots and I not see him. I say I did not see him handle the ballots.

Q. He was right there in your presence, wasn't he? A. I was not watching him; I was not watching Democratic officers.

Q. Any work they did you thought it would be all right? A. I suppose so.

Q. As a matter of fact, were you not told to not watch him while he handled the ballots? A. I was not.

Q. Were you not told to take particular pains not to see what he did? A. I was not.

Q. When did you get this \$10? A. I got part of it right after, just before the count commenced, and about a little while after.

Q. Who gave it to you? A. Mr. Dykeman.

Q. By MR. CLUNIE: The reason you did not watch Dykeman or anybody else, was that this Republican Tally Clerk kept you pretty busy, didn't he? A. That was the only one I was instructed to watch, and that was the only one I did watch.

By MR. DORN: During the whole count, either from the time all the polls closed until the vote was all counted, either yourself or somebody alternating with you, watched all the time, didn't they? A. I can't say who stayed watch. I watched there.

Q. Did you ever go away without leaving some other Democrat who was watching the tally, or leaving some other Democrat who would watch the count when you went away? A. I did.

Q. When? A. It was during the afternoon of the second day.

Q. How long were you gone? A. Three hours.

Q. Was there anybody else there in your place while you were gone? A. I did not leave any relief.

Q. When you came back, didn't you find anybody watching? A. Yes, when I came back I found somebody there.

Q. And that is the only time you know of there being any gap between watchers? A. That was all I knew.

Q. Do you know the gentleman who took your place? A. No, sir.

Q. Who was it you found when you got back there? A. It was Mr. Dykeman.

Q. Mr. Dykeman was in charge of that precinct, was he not? A. Yes, sir.

Q. For the Democratic party? A. He was; I believe so.

Q. Wasn't he what you folks call an extra County Committeeman for election? A. I don't know.

Q. You don't know? A. No, sir.

Q. And he had charge of that precinct? A. I believe he had charge of the precinct.

Q. Did anybody else have charge of watching that tally except Dykeman and yourself? A. I don't know, I am sure.

Q. You know who you relieved, and who relieved you? A. Dykeman relieved me.

Q. Each time? A. When I went away the second time I went away without being relieved.

Q. How did you happen to leave without being relieved? A. I wanted sleep.

Q. Because you thought sleep was more important than any mistakes that might occur? A. Exactly, for the moment.

Q. Then you did not think any mistakes were being made there to make it necessary for you to stay there? A. It didn't matter what—I may not have been conscientious in my duty, and perhaps I should have stayed there.

Q. You did not think the mistakes were very serious that were happening, if you would walk away and leave it, did you? A. I did not know what they were.

Q. And you thought you would walk away? A. Exactly.

Q. Then you thought they were not sufficiently serious in character but what you could sleep? A. I thought there were Democratic Inspectors there and it would be all right.

JOHN MURRAY.

A witness on behalf of contestant, was sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Mr. Murray, where do you reside? Answer—No. 306 Filbert.

Q. What is your full name? A. John Francis Murray.

Q. Are you a brother of the gentleman that was on the stand before — Murray? A. Yes, sir.

Q. Did you live there at the time of the election? A. Yes, sir.

Q. You had another brother, didn't you? A. Yes, sir.

Q. He was in San Quentin? A. Yes, sir.

Q. Did you, before the election held on the sixth day of November, receive any letter from your brother in relation to voting for any particular person for Senator from the Twenty-first Senatorial District? A. Yes, sir.

Q. Where is that letter? Have you it with you? A. No, sir.

Q. State now what the letter said.

MR. DORN: [Interrupting.] Where is the letter? A. I ain't got it here.

Q. What did you do with it? A. I have got it at home.

MR. DORN: Then we interpose a certain objection to this testimony, on the ground that it is apparent that there is better evidence at hand.

By MR. CLUNIE: Did you receive this letter, and what did the letter contain? A. What was in the letter was for me and my brother and my cousin to vote for this Mr. Banks for Senator.

Q. The Republican candidate? A. Yes, sir.

Q. Did you say that your brother asked you in the letter to vote for him? A. Yes, sir.

Q. Did he say why he asked you to vote for him? A. It was for my brother's interest.

Q. Did you communicate that information to your brother? A. No, sir.

Q. The brother that is here, I mean; not to your brother in San Quentin; but did you ask your brother here to vote for Banks in pursuance of that information? A. Yes, sir; I did.

Q. Did you ask your cousin? A. Yes, sir.

Q. You informed them of the contents of that letter? A. Yes, sir.

Cross Interrogatories.

By MR. DORN: Your brother who was in San Quentin at the time is a Republican, is he not? Answer—I don't know.

Q. Don't you know, as a matter of fact, that he is a Republican? A. He might have been at that time, over there.

Q. Just answer my question: Don't you know that he was a Republican?
A. I don't know whether he was or not.

Q. Do you say you received a letter from him? A. Yes, sir.

Q. And that letter asked you to vote for Mr. Banks? A. Yes, sir.

Q. And said it would be for his interests? A. Yes, sir.

Q. Did he give you any reasons except that why it would be for his interest? A. No, sir.

Q. He just simply said it would be for his interest, and asked you to vote for Banks? A. Yes, sir.

Q. Did you say you told your brother, who testified on the stand, of the contents of the letter? A. Yes, sir.

Q. When did you tell him? A. I told him a day or two before election.

By MR. CLUNIE: In regard to this brother in San Quentin, don't you know, as a matter of fact, that before he went to San Quentin he had been a Democrat? A. Before he was over there, yes, sir.

Q. And you don't know what the change was over there that induced him to write this letter? A. No, sir.

JOHN CAREY.

A witness on behalf of contestant, was sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: What is your full name? Answer—John Carey.

Q. Where do you reside? A. No. 306 Filbert Street.

Q. Where did you reside at the time of the election? A. No. 306 Filbert Street.

Q. You have been residing there some time? A. Yes, sir.

Q. Do you know a gentleman by the name of Leale? A. Yes, sir.

Q. He is a captain of a steamer? A. Yes, sir; Captain of the steamer Elite.

Q. He ran over to San Quentin? A. Yes, sir.

Q. Do you know whether he is a relative of Mr. Banks? A. Yes; he is his brother-in-law.

Q. He so informed you? A. Yes, sir.

Q. Did you have a conversation with him regarding Mr. Banks before election? A. Yes, sir.

Q. State it. A. He visited the house on five or six different occasions, and he said his brother-in-law, Mr. Banks, was going to run for Senator in this election, and he would like us boys to get in and do some work for him and he would not forget it.

Q. How did he come to you, did he say? A. My cousin Murray was over in San Quentin at the time, and he used to go over occasionally and speak to James, and he came up to the house and he said James Murray sent him up there; the last time he came up he said that there was a paper given to him, or he wrote it out himself I presume on the paper, from my cousin, the names of boys up on the hill, and for him to go and see these boys and see what they would do regarding voting for this Banks. So I went with him on this occasion, and I told him a couple of residences where these boys lived, and then he promised that he would if his brother-in-law should get State Senator, that whatever lay in his power he would do.

Q. When he first came there, or any time during the time that he was there, did he state to you anything in relation to its being Murray's interest that was in San Quentin to do this? A. Yes, sir; he said Murray sent him there.

Q. Did he say it would be to his interest for you people to work for him? A. Yes, sir; he said it would be to his interest.

Q. To work for Banks? A. To work for Banks.

Q. And was it with that understanding that you did work for Banks that you went around to these different people? Was it your understanding that it would benefit Murray that you went around to these different people? A. Yes, sir.

Cross Interrogatories.

By MR. DORN: How did you think it was going to benefit Murray if his term was going to expire within two days after election? Just tell me that, will you? A. Well, I understood from Mr. Murray——

Q. [Interrupting.] Which Murray? A. James Murray.

Q. You understood from the conversation with him? A. No, sir.

Q. Then, how did you understand from him? A. From the letter that was sent; that Mr. ——

Q. [Interrupting.] That is not the question. How did you expect that one working for or against Mr. Banks would help a man whose term expired within two days after election?

MR. CLUNIE: [Interrupting.] You have the right, Mr. Witness, to fully answer the question, as fully as you want to.

By MR. DORN: How did you expect this to benefit a man whose term was to expire within two days after election? A. The term was not expired within two days after election.

Q. How long after did it expire? A. I think within a week or a couple of weeks.

Q. Are you positive of that? A. I think so, yes.

Q. How long after election was it that his term would expire? A. Giving a close calculation of it, I think it was getting towards the close of November.

Q. And you are as positive of that as you are of anything else you have testified to? A. That is my opinion.

Q. And you are as positive it would not expire until the end of November as you are that you went and saw Mr. Leale? A. Yes, sir.

Q. You are liable to be mistaken in one as you are in the other? A. Yes, sir.

Q. You know Mr. Leale pretty well, don't you—the Captain of that boat? A. Yes, during his coming to the house. I did not know him before.

Q. He was not an officer of the State Prison in any way, is he? A. I don't know, sir.

Q. Don't you know, as a matter of fact, that he is simply the Captain of the boat? A. He is the Captain of that boat, yes, sir.

Q. You have seen James Murray before he came from San Quentin and since, haven't you? A. Before he came from there?

Q. Yes, sir. A. Yes, sir: I was over on a visit.

Q. As a matter of fact, didn't he tell you that Captain Leale, the Captain of the boat, had done favors for him and was very kind to him? A. No, sir.

Q. He did not tell you Captain Leale was very kind to him, in the way of carrying messages, and he felt under obligations to him? A. No, sir.

Q. He never told you anything about it? A. No, sir.

Q. Don't you know that that is the truth, and don't you know that it was out of a sense of gratitude to the Captain that James Murray asked you to vote for the Captain's brother-in-law? A. That was what came in the letter, sir; the Captain had done a great many favors for him, and it would be to his interest.

Q. That was what came in the letter, was it; that the Captain had done a great many favors for him? A. Yes, sir.

Q. And that he wanted to return the favor in some way, if possible. A. Yes, sir.

Q. And that is the reason why he asked you to vote for Mr. Banks? A. Yes, sir.

Q. And that is the only reason? A. I believe so, sir.

Q. That is the only reason he gave in the letter? A. Yes, sir.

Q. You are positive of that? A. Yes, sir.

Q. That the Captain had been kind to him, and had done a great many favors for him? A. Yes, sir.

Q. And for that reason he wanted you to vote for the Captain's brother-in-law, Mr. Banks? A. Yes, sir.

Q. And that was the only reason? A. Yes, sir.

By MR. CLUNIE: You say you are just as liable to be mistaken about the day Murray's term expires as anything else. There is some doubt in your mind about the date of his term expiring, isn't there? A. Yes, sir.

Q. But you are not mistaken about Captain Leale coming to the house and having these conversations with you? A. No, sir.

Q. He said it would be to Murray's interest for your people to work for him? A. Yes, sir.

Q. That statement was in the letter? A. Yes, sir.

Q. And the statement about Captain Leale was also in his letter? A. Yes, sir.

Q. And the statement was in the letter that it would be to his interest? A. Yes, sir.

Q. Did you have any conversation with a gentleman named Mike Smith? A. Captain Smith?

By MR. DORN: You say that in that letter which was received from James Murray there was a statement that it would be for his interest if you voted or worked for Banks? A. Yes, sir.

Q. Then, awhile ago, when you told me that there was nothing more in the letter, you stated a falsehood, did you? A. What?

Q. You told me awhile ago that the only reason was that the Captain had been kind to him, and therefore he wanted to return it to him? A. Yes, sir.

Q. And that statement was in the letter? A. Yes, sir.

Q. And that was the only reason? A. Yes, sir.

Q. Then you stated to Mr. Clunie, later, that there was another reason. Which one of your statements was a falsehood? A. Which one did you ask me?

Q. I have asked you both, and you swear either way, according to the time. You stated awhile ago that the only reason given in the letter was that the Captain had been kind to James Murray? A. Yes, sir.

Q. Was that the truth? A. Yes, sir.

Q. You told the truth that time, did you? A. Yes, sir; in regard to what came in the letter.

Q. And that is what came in the letter? A. Yes, sir.

Q. That is the truth, is it? A. Yes, sir.

Q. No question about it? A. No, sir.

Q. Then the other which was in contradiction of it was a falsehood, was it? A. Yes, sir.

By MR. CLUNIE: You don't understand the question. He is trying to make out that you have sworn on the stand to something that is not true.

A. I know what I am speaking is true.

Q. As I understand it, there was a statement in the letter that Captain Leale had befriended Murray? A. Yes, sir.

Q. And there was also a statement that to work for Banks' election would be for Murray's interest? A. Yes, sir.

Q. And then Captain Leale also made the statement to you that it would be to Murray's interest; did he so state to you? A. Yes, sir.

Q. Both statements were in there, that Captain Leale had befriended Murray, also, that it would be for Murray's interest to vote for Banks; were both of those statements in the letter? A. No, sir; that was what Captain Leale said, that it would be to Murray's interest if his brother-in-law got Senator.

Q. You don't intend to misstate anything in your testimony here? A. No, sir.

Q. And if you have made any such statements as Mr. Dorn said, it has simply been a mistake? A. Yes, sir.

Q. And you desire to rectify it now? A. Yes, sir.

By MR. DORN: Was there a statement in the letter that because of the kindness to James Murray that you were asked to vote for Mr. Banks or work for him? A. Yes, sir.

Q. If anybody made the statement that there was anything else in the letter they stated a falsehood, did they? If anybody testified here to-day that there was some other reason given in the letter, and that this reason you now state was not in the letter, their testimony is false and yours is true? A. Mine is true; yes.

Q. And theirs would be false, wouldn't it? A. I can't say exactly that, because I can't recollect all that was in the letter.

Q. If you state one thing and the other witness states the opposite, and yours true, theirs would be false, wouldn't it? A. I don't know, sir. They might have another part that I don't recollect.

Q. As a matter of fact, do you recollect anything about that letter? A. Yes, sir.

Q. What do you recollect? A. I saw the letter, and I read it.

Q. And that was the statement which it contained? A. Yes, sir.

Q. It was not because of any future favors, but it was because of favors in the past? A. Yes, sir.

Q. To James Murray? A. Yes, sir.

Q. That he asked you as his relative and a friend to vote for the brother-in-law of the man who had been kind to him while he was in jail? A. Yes, sir.

Q. And that was the only reason he gave? A. Yes, sir.

Q. Now you are positive of that? A. Yes, sir.

Q. Any other statement of the contents of that letter which would be made by any other witness would be false, would it not? A. I believe so.

Q. The only talk about its being to the interest of James Murray was what Captain Leale said to you? A. Yes, sir.

Q. Then awhile ago when you said that was in the letter you told what was false, did you?

MR. CLUNIE: He told you three or four times what was in the letter. He said he only read the letter once, and he was not positive what was in

the letter, but that to the best of his recollection what he has stated was in the letter is true. He says there may have been something else in the letter and he not know it.

By MR. DORN: You state now that the only reason assigned was because of past favors? A. Yes, sir.

Q. You stated awhile ago that there was some other reason, and then when there was some other reason given and this reason was not given you then stated falsely, and you state correctly now? A. I state correctly now.

Q. Any other statement would be false, would it? A. I don't know.

Q. If this statement is correct any other statement would be false, wouldn't it? A. Any different one than the one I give; yes, sir.

By MR. CLUNIE: You simply state that to the best of your recollection that was all that was in the letter? A. Yes, sir; what I said about Captain Leale, what he would do afterward.

Q. But you did not willingly misstate anything? A. No, sir.

Q. But you state now that you are not exactly familiar with the contents of the letter? A. No, sir.

Q. And the other party who testified knew it more than you did? A. Yes, sir.

By MR. DORN: What do you know about what somebody else knows? You said that Mr. Murray knew the contents of the letter better than you. How do you know he knew it at all? Can Murray read? A. Yes, sir.

Q. How do you know it? A. I am living in the same house.

Q. Does that give you the information that he can read? A. Yes, sir; I see him read the papers and write.

Q. How do you know he knew the contents of that letter better than you do? As a matter of fact aren't you talking about something you don't know anything about? A. No, sir; I am not.

PHILIP A. RILEY.

A witness on behalf of contestant, was sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: What is your full name? Answer—Philip A. Riley.

Q. Where do you reside? A. No. 127 Francisco Street, sir.

Q. How long have you resided there? A. About a year.

Q. That is in the Twenty-fourth Senatorial District, isn't it? A. Yes, sir.

Q. In what precinct? A. That is the First Precinct.

Q. Do you know W. O. Banks, this gentleman, here [indicating respondent]. A. Yes sir; I met him a couple of times.

Q. You know he was a candidate for Senator from that district, do you? A. Yes, sir.

Q. Did you see him any time before election? A. Yes, sir.

Q. Did you have a conversation with him? A. Yes, sir.

Q. Who was present at that conversation? A. Mr. Fay.

Q. And yourself? A. Yes, sir.

Q. Just state the conversation between yourself and Mr. Fay and Mr. Banks. A. Mr. Banks asked the boys to come over in the saloon and drink.

Q. Ask how many? A. A whole crowd of boys at the North End Social Club.

Q. Do you belong to that club? A. Yes, sir; I was President at the time.

Q. Go on. A. We went over there and began to talk and Mr. Morrow had sent down a big picture frame to the boys, and we asked Mr. Banks to give us money to have our pictures taken, and we began talking and he said he didn't want to put out money for anything, and he said he would put \$20 over the bar—he would give us \$40 if we carried the precinct for him—he would put \$20 over the bar there, and he would give us \$20 more if the precinct was carried for him.

Q. When was that? A. The second day before election.

Q. That occurred between you and this gentleman and Mr. Banks. He didn't say this out before the whole crowd? A. No, sir.

Q. You and Mr. Banks and he went away and talked one side, did you? A. Yes, sir.

Q. And he said if you carried that precinct for him for Senator he would put \$20 over the bar now? A. Yes, sir.

Q. And he would give you the other \$20 when you carried it? A. Yes, sir.

Q. That occurred in this city and county? A. Yes, sir.

Cross Interrogatories.

By MR. DORN: Who was present when that conversation occurred? A. Me and Mr. Fay. There was some of his friends present, but they did not hear us.

Q. How do you know they did not? A. Because we were talking quietly.

Q. How far away were you from them? A. About from here to you [indicating].

Q. This was when? A. This was on Sunday night.

Q. Of what week? A. The Sunday before election.

Q. Where was that? A. That was in William Lilkendey's saloon.

Q. You are positive it was in Lilkendey's saloon? A. Yes, sir.

Q. You are positive it was the Sunday night before election? A. Yes, sir.

Q. What time in the evening? A. It was early; I believe it was between five and eight.

Q. It was between five and eight? A. Yes, sir.

Q. And this proposition was made to you by Mr. Banks? A. Yes, sir.

Q. And there was nobody else present? A. Yes, sir; Mr. Fay was present.

Q. I mean except Mr. Fay? A. No, sir. They were people present there, but I don't think they heard it.

Q. What did you say? A. I said no, we couldn't do it; that I didn't live in the precinct.

Q. That was the only reason you gave for not doing it—that you did not live in the precinct? A. No, sir.

Q. You thought if you lived there you could do it? A. No, sir. I wouldn't try to force nobody to do it.

Q. You told him that you would not do it? A. I told him I could not do it.

Q. He told you he would put up \$40 to have those pictures taken if he carried that precinct? A. No, sir.

Q. And he told you he would put \$40 up? A. No, sir. He said he would put \$20 up first, and \$20 more after we carried the precinct.

Q. And you told him you couldn't do it? A. Yes, sir.

Q. What is the name of that club? A. The North End Social Club.

Q. Do you know Mr. Sullivan [indicating contestant]? A. Only by sight. I never spoke to him.

Q. That same night that you met Mr. Banks was the night Mr. Morrow had a meeting over that way, was it not? A. I couldn't say.

Q. Isn't it true? A. That Mr. Morrow had a meeting there that night?

Q. Yes. A. I couldn't say so. No, I don't think it was.

Q. Was it on a regular meeting night of your club that this took place? A. No, I don't think it was.

Q. You think it was not on a regular meeting night? A. No, sir.

Q. Was it on the occasion of any special meeting? A. No, sir.

Q. How did it happen you were there? A. We are always there in the club in the night time.

Q. You were always there? A. Yes, sir, the boys were there dancing.

Q. Did you have a ball that night? A. No, sir.

Q. How do you know it was Sunday night? A. I am most positive it was Sunday night.

Q. Are you able to swear it was Sunday night? A. No, I won't swear.

Q. You stated awhile ago it was Sunday night. A. I believe that it was Sunday night.

Q. You cannot state the day of the week? A. Yes; it was Sunday night before election.

Q. You know that was not the night Mr. Morrow had a meeting there? A. No, sir, I don't think it was.

Q. Are you positive about that? A. That is positive.

Q. How did you happen to meet Mr. Banks that night? A. He came past the club and stepped in.

Q. Didn't you ask him to come in? A. No, sir, I did not ask him to come in.

Q. Didn't you ask him to come in and see that picture frame that Mr. Morrow had given the club? A. No, sir. Some of the other parties might have asked him, but I never asked him.

Q. You asked him to have the picture of that club taken, did you? A. Yes, sir.

Q. Why did you ask Mr. Banks to get the pictures taken of that club? A. Because we were told to ask him for the boys.

Q. What boys? A. The boys that belonged to the club.

Q. The boys that belonged to the club told you to ask Mr. Banks to get the pictures taken? A. Yes, sir.

Q. Why did you ask Mr. Banks to have the pictures taken of the club? A. Because he was a candidate.

Q. Because he was a candidate you asked him to get the pictures taken? A. Yes, sir.

Q. Were you acquainted with him before that? A. I had met him before.

Q. And because he was a candidate for office you asked him to have the pictures of that club taken, and he refused? A. No, he did not refuse to have them taken; he gave us \$10.

Q. You said awhile ago he refused to have them taken, and made a different proposition. You said he refused to have the pictures taken, and

made a different proposition. A. I don't say he refused to have the pictures taken.

Q. Your first testimony was that he refused to have the pictures taken. Do you say he did not refuse to have the pictures taken? A. No, sir; he gave us \$10 that night.

Q. He gave you \$10 right then? A. Yes, sir.

Q. What did he give you \$10 for? A. To have the pictures taken, I suppose.

Q. Who did he give it to? A. He gave it to me, when me and Mr. Fay were standing talking to him.

Q. He gave it to you personally? A. Yes, sir.

Q. Where? A. In Lilkendey's saloon.

Q. Toward having the pictures taken? A. Yes, sir.

Q. As a matter of fact, didn't this conversation take place on the night of Mr. Morrow's meeting, and didn't you personally ask Mr. Banks, as a candidate for office, to treat the boys? A. Didn't I ask him?

Q. Yes, you individually? A. No, I did not.

Q. You did not ask him to treat the boys? A. No, sir.

Q. You asked him to have the pictures of the club taken? A. Yes, sir.

Q. But not to treat the boys? A. No, sir.

Q. What were you to do with this club? A. To have the pictures taken, I suppose.

Q. You did not turn it over to the club? A. Yes, sir. I thought you meant did we turn it back to Banks?

Q. Did you keep any account of that? A. No, sir; not anything like that.

Q. Have you got any books for the club? A. Yes, sir.

Q. Did you put down anything like that? A. No, sir.

Q. What became of the \$10? A. We got the pictures with it.

Q. Did you get enough money by the different contributions to get a picture? A. No, sir; we got \$10 and got the picture taken ourselves.

Q. That is the only money you got? A. No, sir. He gave us \$5 another time to get a barrel of beer.

Q. What did you get from Mr. Sullivan? A. We didn't get a cent.

Q. You did not call him in there and ask him for money? A. No, sir. We never struck another one for money only Mr. Banks.

Q. As a matter of fact, didn't this conversation take place on the night of Mr. Morrow's meeting? A. No, sir.

Q. You are positive it was on the Sunday previous to the election? A. Yes, sir.

Q. And it was between six and eight o'clock in the evening? A. Between five and eight.

Q. What is your full name? A. Philip A. Riley.

Q. Where do you live? A. No. 127 Francisco Street.

Q. Where do you work? A. I worked in the woolen mills lately. I worked in the wireworks the last two months.

Q. Where do you work now? A. I work in the wireworks.

Q. Where is that? A. Bay and Mason.

Q. How many members were there in that club of yours? A. It is limited to thirty-five. About thirty members.

Q. There are thirty members now? A. Yes, sir.

Q. Did you have a picture of all of them taken? A. No, sir; we ain't got them all yet.

Q. How many did you get taken? A. We have got seventeen or eighteen.

Q. That is all? A. Yes, sir.

Q. And you got those seventeen or eighteen with that \$10? A. Yes, sir.

Q. You are as positive that this did not occur on the occasion of the Morrow meeting over there as you are of anything else you have testified to, are you? A. Yes, sir.

MR. CLUNIE: He has testified that he did not know.

By MR. DORN: You testified that it was on Sunday night, did you not? A. I testified that I thought it was on Sunday night, but I would not swear.

Q. Can you tell me what night it was? A. I say I think it was Sunday, but I won't swear to it.

Q. It was not a regular meeting night of your club? A. No, sir; it was not.

Q. What night does your club meet? A. It meets Thursday night.

Q. How long before election day was it? A. It was inside of a week.

Q. Did you have another meeting of your club between that time and the election? A. No, sir.

Q. Then it must have been after Thursday before election. A. Yes, sir.

Q. Was it on Friday or Saturday night? A. I told you I would not swear to it.

Q. Answer me, yes or no. A. I would not swear to it.

Q. Was it on Monday night before election? A. No, sir. It was before election, but I wouldn't swear what night it was.

Q. You don't know whether it was Monday night or not? A. No, sir.

Q. You don't know whether it was Tuesday night or not? A. No, sir, it was not Tuesday.

Q. You don't know whether it was Saturday night or not? A. I say I am pretty sure it was Sunday night.

Q. Didn't you ask him on this occasion to buy a keg of beer for the club, or to treat them, or didn't he say "No, but I will buy you boys a keg of beer?" A. No, sir.

Q. Isn't that the night the conversation took place? A. No. That is the night Mr. Morrow was down there.

Q. Didn't you go on that same night with Banks over to the brewery to get a keg of beer and the place was closed and you could not get it? A. Yes, sir.

Q. And then you went to Lynch's and got it? A. Yes—no, sir, we did not. He gave us \$5 and we went and got it.

Q. Where did you get it? A. We bought it of Pete McGowan.

By MR. CLUNIE: I understand you to testify to the best of your belief it was the Sunday night before election, but you are not positive what night it was? It was some night before election that this occurred? A. Yes, sir.

Q. But you won't swear what night it was? A. No, sir.

JAMES A. FAY.

A witness on behalf of contestant, was sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Where do you reside? Answer—No. 212 Francisco Street.

Q. How long have you lived there? A. I have lived three years in that house, and in the next door for five.

Q. Where is that? A. The Second Precinct of the Thirty-fourth.

Q. You lived there just before election? A. Yes, sir.

Q. Do you know Mr. Banks? A. I have seen him.

Q. Did you know he was a candidate at the recent election? A. Yes, sir.

Q. Was you present at the conversation with him and Riley a night or two before election? A. Yes, sir, I was.

By MR. DORN: Where was the conversation? A. At Mr. Lilkendey's saloon.

Q. When was it? A. I think the Sunday night before election.

Q. Are you positive of that? A. I am not positive of that, but to the best of my recollection it was Sunday night.

By MR. CLUNIE: I want to show, and you are not able to testify to anything at all except to the best of your information and belief. In view of Mr. Dorn threatening every witness on the stand with the Penal Code, I notify this witness he is not to swear to anything he don't know except to the best of his knowledge and belief.

Q. This, I understand you, to the best of your belief was Sunday night? A. That is what I said.

Q. Go on and state the conversation as it occurred. A. Mr. Banks said he would put \$20 over Lilkendey's bar, and then give us \$20 more if we carried the Second Precinct.

Q. Of what district? A. Of the Thirty-fourth.

Q. That conversation occurred between you, Mr. Riley, and Mr. Banks? A. Mr. Riley and myself, and Banks.

Q. That occurred in this city and county? A. In this city and county; yes, sir.

Q. And you think it was on Sunday night before election? A. I won't be positive.

Cross Interrogatories.

By MR. DORN: State the exact language you used and the exact language which Banks used. A. That is pretty hard to do, but what he said was that he would put \$20 over Lilkendey's bar and \$20 more if the Second Precinct is carried for him.

Q. That is not what you said a moment ago? A. It is the same thing.

Q. No, it is not the same thing. Tell me what he did say? A. He said he would put \$20 over Lilkendey's bar, and \$20 more we would get if the Second Precinct was carried.

Q. Did he say if the Second Precinct was carried for him, or if he carried the precinct? A. It is the same thing.

Q. Which did he say? A. If he carried the Second Precinct.

Q. That you are positive of? A. No, I ain't positive of the words.

Q. Are you positive of anything? A. Yes, sir; I am.

Q. What are you positive of? A. I am positive I am up here on the stand speaking.

Q. That is about all you are positive of? A. Yes, sir; I am.

Q. That is the only thing you are positive of? A. No, it is not. I am positive of the testimony I am giving.

Q. Why did you say you are not sure of it? A. I am not positive of the exact words Mr. Banks used.

Q. What more are you positive of? A. I am positive of more that he said.

Q. You are positive it was Sunday night? A. No, I am not positive.

Q. That is something you are not positive of? A. No, sir.

Q. Then you are positive of the language? A. No, sir; I am not.

Q. That is something else you are not positive about. Is there anything else of your testimony that you are not positive about? If there is, I want to start out with that. As a matter of fact, you are not positive about any of it? A. I am positive Banks came up to me and offered to put \$20 over Lilkendey's bar and give us \$20 more when he carried—if he carried that precinct.

Q. That much you are positive of? A. I am positive.

Q. Who have you been talking with about this matter? A. I have not been talking with anybody, except myself and Riley.

Q. How did you happen to come here? A. Well, notified.

Q. Who told you to come here? A. Mr. Callihan.

Q. What else did he tell you? A. Nothing else.

Q. He did not ask you what you could testify to? A. He knew what I could testify to.

Q. Did he ask you what you could testify to? A. Yes, sir.

Q. What did you tell him? A. I told him just as I told you.

Q. You told him that is what you could testify to? A. Yes, sir.

Q. How did Callihan happen to ask you this? A. I don't know.

Q. You say he asked you what you could testify to? A. I told him before that. There was another party with us; Riley was there and he might have told him.

Q. Then there was somebody else present besides yourself and Riley? A. Riley was the other party, and Banks.

Q. Those were the only three people that were present? A. That was the three.

Q. And you were away from the rest? A. We were to one side.

Q. Where did this take place? A. Lilkendey's saloon.

Q. At what time? A. Between five and eight.

Q. Just the same time as the other man? A. Well, about the time.

Q. In what part of the saloon did it occur? A. It occurred right alongside of the table at the end of the bar.

Q. Who came into that saloon with Banks, of his own friends, outside of your club? A. That I could not say.

Q. Did you know any of them? A. No, I did not.

Q. And did Banks come alone into that saloon? A. I didn't see Banks until he came up to the club room; then we all went into the saloon together. I believe there were some of his friends with him.

Q. Was this gentleman with him [indicating]? A. I wouldn't swear to that.

Q. Did that other gentleman come into the club room with him? A. I wouldn't swear to that.

Q. Did that gentleman go with him and you over into the saloon? A. I wouldn't swear to that.

Q. Was this gentleman in Lilkendey's saloon during the same time you were there? A. I don't know; I don't recognize him at all.

Q. As a matter of fact, wasn't this gentleman with Mr. Banks and talking with that gentleman? A. I did not say I saw a gentleman there. I don't know whether he was there or not.

Q. You don't know? A. No, sir.

Q. Who else came in with Mr. Banks, besides this gentleman? A. I did not say that gentleman came in with Mr. Banks.

Q. Let us suppose this man did. Then who else did? A. I did not see anybody. I don't know who came in with him.

Q. You don't know anything except the one thing, and you know that you got over to that saloon and somebody made the proposition? A. Somebody was with Banks, and I wouldn't swear who it was.

Q. You are not certain of anything but one thing, and that was that Banks made that proposition to you, and that is fixed in your recollection like a glittering star, is it? A. That is all.

By MR. CLUNIE: You said in your testimony Mr. Banks said he would put \$20 over the bar and if this precinct was carried you would get \$20 afterwards? A. Yes, sir.

Q. Did he ask you people to use your efforts to carry that precinct for him? A. He said he would put \$20 over that bar and give us \$20 more if he carried the precinct. He did not ask us particularly.

Q. What office do you bear to that club? A. I am nothing now. I am Vice-President elect, but at the time I did not hold any office.

By MR. DORN: At that time you were not an officer of the club at all? A. I was not.

Q. Mr. Banks did not ask you or any other members of the club to vote for him? A. No, sir. I don't know about any of the other members; he didn't ask me.

Q. He did not make any proposition of the kind to you? A. Not that I know of.

Q. He was willing to give the club a portion now, and if he was successful he was willing to give them some more? A. Yes, sir.

Q. And if he was defeated he could not afford it? A. No, sir.

Q. And that was the only proposition that was made? A. That was all.

GEORGE RYAN.

A witness on behalf of contestant, was sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: What is your name? Answer—George Ryan.

Q. Where do you live? A. No. 5 Jansen.

Q. What district is that in? A. The Thirty-fourth.

Q. In what precinct? A. The Fourth.

Q. Do you know a gentleman by the name of Michael Smith? A. Yes, sir.

Q. Captain Michael Smith? A. I know him very well.

Q. You have known him for some time? A. Yes, sir.

Q. Did you have any conversation with him prior to or since the election on the sixth of November in regard to Mr. Banks and his friends in his behalf, with a convict in San Quentin? A. Yes, sir.

Q. Who was present at that conversation? A. He and I.

Q. There was nobody else there? A. No, sir.

Q. Proceed. A. He and I had a conversation in the Fourth Precinct; there was a barroom adjoining—I think it was the ninth of November, the last day of the count of that precinct; I think it was the ninth of November.

By MR. DORN: That was after the election? A. After the election. He told me that Mr. Sullivan's defeat was owing to his influence in San Quentin.

MR. DORN [interrupting]: To all this we interpose the special objection again, on the ground that it is the broadest and veriest hearsay in the world.

By MR. CLUNIE: Go on and tell the conversation. A. He and I had been together all the night before and all that day, and wherever I would go he would go, and he told me that Sullivan's defeat was owing to that, to a great extent.

By MR. CLUNIE: Owing to what? A. Owing to his influence at San Quentin, and I asked him how he accounted for that, and he said, "Don't you know that there is twenty-seven convicts in San Quentin that lived in this Senatorial District," and he said "Those twenty-seven convicts befriended us. I was there, and I had letters from them to their friends, and went to their friends when I happened to be away from there, and sought their influence, which I thought I had." I said, "Well, I don't you—"

Q. [Interrupting.] Never mind what you said; I don't care about that.

MR. DORN: I want to hear it.

By MR. CLUNIE: Just wait until I ask you that question. What position had this Mr. Smith occupied at San Quentin? State, if you know. A. I don't know positively, but I heard that he was a Captain there.

Q. Captain of the Guard? A. Yes, sir.

Q. Captain of the Watch? A. That is what I understood. I never was over there.

Q. That conversation occurred in this city and county, in a barroom in the Fourth Precinct of the Thirty-fourth District, on the night of the ninth of November? A. Yes, sir.

Cross Interrogatories.

By MR. DORN: Go and tell us the rest of that conversation. You got to the conversation where you told what he said, and you were about to tell what you said when Mr. Clunie stopped you. Answer—I said to Mr. Smith, "You have no influence with our friends if we have any there, and I don't think we have got any there;" and he said, "You have got one man there who has got five relatives in this district, and through you and Mr. Maxwell they were going to vote for Mr. Sullivan, until I got a letter from him to their relatives." I asked him who it was, and he told me it was Murray.

Q. You and Maxwell were very active in Sullivan's fight there wasn't you? A. Very active.

Q. You are a member of the Confidence Club, are you? A. Yes, sir.

Q. You and Mr. Maxwell were the chief advisers? A. I don't speak of this Mr. Maxwell. I speak of his brother.

Q. You were making Mr. Sullivan's fight over there, were you not? A. Yes, sir.

Q. This conversation that took place between you and Mr. Smith, he told you because he had been friendly to these men while they were in San Quentin; he told you they were willing to help his way if possible, and in that way they were willing to influence their friends in the fight for Mr. Banks? A. That was a portion of it. He told me he had befriended them for this particular purpose.

Q. But the fact was that he had befriended them? A. He had befriended them.

Q. It was for past favors which he had done and not for the hope of future reward that they assisted him? A. And future also.

Q. Why didn't you say that also? A. I did.

Q. No, this is the first you stated. A. It was past and future favors he was to bestow on them; but as to favors he could bestow on Murray, I know nothing about. I only know just what he told me.

Q. Where do you live? A. No. 5 Jansen Street.

Q. How many rooms in that house? A. Eight.

Q. How many people live in that house? A. Do you mean voters?

Q. I asked you how many people live there? A. It would take me some little time to tell you.

Q. Take some little time, and tell us. A. At the present time?

Q. Yes, sir. A. There are two sisters-in-law, the wife, the sister is five, the brother is six.

Q. How old is your brother? A. About twenty-four.

Q. Don't miss yourself; that makes seven. A. Myself is seven, and Dorman is eight.

Q. How old is Dorman? A. About twenty-five.

Q. Is he a citizen of the United States? A. Yes, sir.

Q. Did he register from that house? A. Yes, sir.

Q. Did you register from that house? A. Yes, sir.

Q. Did your brother register from that house? A. Yes, sir.

Q. How many people are remaining in that house now? A. Eight.

Q. That is all of you? A. Yes, sir.

Q. Wasn't three of you all and the only voters that were registered from that house? A. Yes, sir.

Q. How many voters have voted from that house on election day? A. Four.

Q. Who, besides your people? A. A man by the name of Barry.

Q. Where is he now? A. In the Holy Cross Cemetery. He died previous to election.

Q. He died before the election, did he? A. Yes, sir.

Q. Was his name voted on election day? A. Not that I know of. I was not a member of the Board of Election, and I could not say that his name was voted. If it was, I think it was the Registrar's fault.

Q. You are positive that there were only four men registered from that house on election day? A. Yes, sir.

By MR. CLUNIE: You ain't responsible for the count? A. No, sir.

Q. You give the legitimate voters that were there, and that is all you supposed attempted to vote from that place? A. Yes, sir.

[Here the further hearing was continued until Friday, January fourth, at nine o'clock A. M.]

THIRD DAY.

SAN FRANCISCO, CALIFORNIA, }
Friday, January 4, 1889—9 o'clock A. M. }

Present: Justices Stafford and Boland, the contestant and respondent, and their respective counsel, and Thos. R. Knox, official reporter.

MR. DORN: Before we proceed this morning, there has arisen a question whether any proposition had ever arisen about votes, and there seems to be a misunderstanding. We have been under the impression all the time that the contestant was unwilling to count the votes, and I will state further that we have never received any proposition to count the votes. Representing respondent, we now propose and offer to count the votes cast,

and which are on file now, and which were cast for this office of Senator for the Twenty-first Senatorial District, and that that count shall take place now and before your honors.

MR. CLUNIE: When this contest was first commenced, Mr. Sullivan and myself, particularly after consulting with Mr. Sullivan, talked with Mr. Jacob Shaen, who represented not only the State Central Committee, but also Mr. Banks, I understand, and was particularly active in Mr. Banks' fight, and I then stated myself if Mr. Banks would have the votes counted, we would abide by it; and Mr. Shaen said that he went to Mr. Banks and Mr. Banks had refused to have them counted. Since then they have had these ballots and hawked them around. So far as I am concerned, I won't object to it.

MR. DORN: Will you accept that proposition?

MR. CLUNIE: I am not talking of propositions.

FRED. R. CONWAY.

A witness called for contestant, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Where do you reside? Answer—At present, 114 Hayes Street.

Q. How long have you lived there? A. I am living there since shortly after the election.

Q. Didn't you live there a little before the election? A. Yes, sir, I lived there before the election also.

Q. How long before the election did you live there? A. About a year, I guess.

Q. Didn't you live there longer than a year? A. No, sir.

Q. You had been at 114 Hayes Street for a year prior to election? A. No, sir.

Q. How long prior to election did you live at 114 Hayes Street? A. About five weeks.

Q. In whose house did you live at 114 Hayes Street? A. My mother's.

Q. Are you keeping house there? A. My mother does.

Q. And you lived there then? A. I lived there at times.

Q. Then where did you go? A. With Charley Smith.

Q. Who is he? A. A coppersmith, Jackson Street near Drumm, I think it is.

Q. You lived over there, but you ain't positive where you lived? A. You didn't ask that question. You asked me where his shop was.

Q. I asked you where you lived? A. I lived 1236 Broadway.

Q. Did you board there? A. I roomed there.

Q. Did you pay your room rent? A. Yes, sir.

Q. To whom? A. Mr. Smith.

Q. How much? A. Five dollars a month.

Q. How many rooms are there in that house? A. Five, I believe.

Q. Which room did you have? A. The rear room in the upper floor.

Q. That is a bedroom, is it? A. Yes, sir, there was a bed in it.

Q. And what is the number of the house? A. No. 1236.

Q. No. 1236 Broadway? A. Yes, sir.

Q. Charles Smith lived there, and you went to board with him before election? A. Yes, sir.

Q. How long did you live there? A. I think about a week following the election.

Q. Then where did you go? A. To 114 Hayes Street.

Q. What was your object in leaving 114 Hayes Street and going over there? A. Because I wanted to room there.

Q. Why did you want to room there five weeks before election and one week after? A. I don't know, any more than to go over there and keep company with Smith.

Q. Smith asked you to, I suppose? A. Yes, sir.

Q. He is a married man, isn't he? A. Yes, sir.

Q. And he wanted you to keep him company? A. I didn't go exactly to keep him company, but I went to room there.

Q. You said you went to keep him company? A. Well, perhaps that more than anything else.

Q. Smith was lonely and he wanted you to keep him company; is that the fact or not, sir? A. No, it is not exactly the fact that I went to keep him company, but I went to room there.

Q. Does he keep a lodging house? A. No, sir; there were three or four rooming in the house. I don't know whether it was a lodging house or not.

Q. Did they all come in there before election? A. Yes, sir.

Q. Just give me the names of the people that were rooming there five weeks before election. Give me their names? A. Mr. Williams.

Q. What is his name? A. John Henry, I believe.

Q. Does he live there still? A. No, sir.

Q. And he only lived there five weeks before election? A. No; he lived there three months before election.

Q. You said you all moved in there five weeks before election? A. No, sir; I didn't say that.

Q. Who else moved in there? A. Mr. Simpson, I believe.

Q. What is he doing? A. He is a painter, I believe.

Q. Does he live there yet? A. No, sir; Mr. Smith moved about election time over to Berkeley, and we all had to get out.

Q. Mr. Smith don't live there now, then? A. No, sir.

Q. Where is Mr. Smith's place of business? A. Washington and Drumm Streets, I believe.

Q. Don't you know? A. I don't know the number.

Q. Haven't you ever been there? A. Yes, sir.

Q. It is very near there, isn't it? Is it right on the corner of Washington and Drumm? A. No, it is between Drumm and East, I believe.

Q. But you are not positive? A. No, I believe it is down there.

Q. How many times have you been down there? A. Two or three times.

Q. Yet you cannot swear positively where it is. Don't you know you went in that house as a stuffer for the Republican party, as a matter of fact? A. No, sir.

Q. Don't you know you were requested to go there at the request of some Republican politicians? A. No, sir; nobody requested me to go there.

Q. You don't know where James Simpson is now? A. No, sir.

Q. You never knew him before he moved into that house? A. Oh yes, I knew him a couple of years.

Q. How long have you known Mr. Smith? A. A couple of years, I guess.

Q. Has he always been down on Washington street near Drumm? A. He has since I knew him.

Q. And you went there to see him often? A. A couple of times.

Q. How did you come to go to up his house? A. Because I lived up there for fifteen or sixteen years, prior to living on Hayes Street.

Q. Where did you live up there? A. I lived on Bridge Street, off Broadway, between Hyde and Leavenworth.

Q. What is the number of that house? A. I don't know the number. It is a large tenement house; 1227 Broadway is the number of the building.

Q. You lived there at 1227 Broadway for five years? A. About five years.

Q. What five years were those? A. From about 1875 to 1880. Something like that.

Q. In 1880 where did you live? A. I moved to 12 Lynch Street, between Hyde and Leavenworth, Broadway and Pacific.

Q. Did you live there alone? A. No, I lived there with my mother.

Q. You have always lived with your mother for the last fifteen years? A. No, sir; I have been away sometimes.

Q. During the time being in the city, you have been with your mother all the time? A. Yes, sir, as a rule.

Q. Don't you think it a little strange you would leave your mother, after living with her fifteen or twenty years? A. I would often go off and stay a week or so, and stay with the boys—young fellows. I went over to have some fun in the campaign more than anything else.

Q. You went into this district to have some fun more than anything else, in the campaign? A. That was it.

Q. You went because you wanted to have some fun? A. I went because I happened to know all the boys over there.

Q. You are pretty well acquainted with Mr. Banks, ain't you? A. No, sir.

Q. You have never known him? A. I have seen him.

Q. You never knew him before election? A. I saw him going around the hill with the boys.

Q. You talked with him prior to the day of election, didn't you? A. I don't know, unless it was "How do you do?" etc.

Q. Do you swear you never had any further conversation than that with Mr. Banks before the day of election? A. Yes, sir.

Q. You are just as sure of that as of anything else you have testified to here? A. Yes, sir.

Q. There is a grocery store, corner of Broadway and Hyde, isn't there? A. Yes, there is a couple there.

Q. And you were in the habit of going in there considerably? A. Yes, sir, at times.

Q. Didn't you go in there pretty often and talk about Banks? A. Yes, sir.

Q. Didn't you go in and say you were for Banks—that he was a good fellow, and you wanted to see him elected? A. Yes, sir.

Q. You were up there in the interests of Banks, weren't you? A. No, sir.

Q. Weren't you there in somebody's particular fight? A. Nobody's fight. For the Republican ticket; that is all.

Q. Didn't you have your particular friends there? A. Yes, I have friends, but I don't know any body in particular there.

Q. You are sure you went there five weeks before election? A. Yes, sir, about five.

Q. How long after you got into that district before you registered? A. I guess a couple of weeks.

Q. You are sure of that, are you? A. Yes, sir.

Q. Did you pay your rent when you first went in? A. Yes, sir.

Q. Have you got a receipt for it? A. I believe so; I am not sure. I did have a receipt. [Looks and produces receipt.]

Q. When was this receipt made out? A. About the first of October.

Q. You are sure of that? A. Yes, sir.

Q. You paid five dollars when this was made out? A. Yes, sir.

Q. And you asked him for a receipt for it? A. Yes, sir.

Q. Don't you know, as a matter of fact, that this receipt was only given to you in case the Registrar came after you and you could show that fact? A. I don't know. When I pay a bill, I want a receipt.

Q. Wasn't that your idea in getting this receipt? A. No, sir.

Q. Didn't you state to those parties you were all right in that house, because you had a receipt? Didn't you state that in this saloon? A. Yes, sir.

Q. How did you come to make that statement? A. In case there was any trouble arising,

Q. You bragged that around, that in case of any trouble you had that? A. I didn't brag of it.

Q. You made that statement in that saloon two or three times, didn't you? A. I don't know as I made it two or three times. I made it once.

Q. Whose handwriting is that? A. It is my writing.

Q. How does it come Smith didn't write it? A. He doesn't write a very good legible hand, you can see.

Q. You think he doesn't write as good as you do, do you? A. You can see for yourself.

Q. You wanted the receipt in good writing? A. I don't know. He asked me to write it.

Q. You were a member of the Board of Election up there, weren't you? A. I was.

Q. In that precinct? A. Yes, sir.

Q. How did you come to get on there? A. Through a friend of mine.

Q. What friend? A. Mr. Cahill, President of Club No. 2, Thirty-fourth District, I believe it was.

Q. Mr. Cahill, President of Club No. 2, Thirty-fourth District, got you on? A. Yes, sir.

Q. When did you first talk with Mr. Cahill about getting on? A. I didn't talk with him at all about it. He approached me and wanted me to go on.

Q. When did he approach you? A. Shortly before he did it.

Q. Didn't he approach you and tell you if you would go over he would put you on? A. No, sir.

Q. Didn't you state in this saloon, a little before election, that your object in going over there was to help Banks, and that you were to be on the Election Board? Didn't you so state in this saloon, corner Hyde and Broadway? A. I don't remember.

Q. Wouldn't you remember it if you said it? A. I don't remember anything of the kind.

Q. You don't remember saying that? A. No, sir; I do not.

Q. You might have said it? A. I don't know whether I said it or not. I don't remember saying it.

Q. Was it the fact or not? A. Was it the fact I moved there for that?

Q. Yes, sir. A. No, sir.

Q. You went on that Board? A. Yes, sir.

Q. You were put there by Mr. Cahill? A. Yes, sir; at least he signed my application.

Q. Then what did you do with your application? A. I gave it to him.

Q. Then you didn't care any more about it? A. Not until I got my appointment.

Q. Then you went on election morning to the discharge of your duties?

A. Yes, sir.

Q. Who were the officers of that Board? A. Do you mean the Supervisors, or the Clerks and Judges and Inspectors?

Q. Give me the whole Board. A. James Bellingham was one Inspector there. John L. Durkee, John A. Barry, Mr. Browser—I don't know his first name—and Stephen Williams, I believe his name is, was a Democratic Clerk.

Q. Wasn't it Potter? A. No, sir; Potter was not a Clerk.

Q. He was there? A. He was not a Clerk.

Q. What was he? A. I don't know; he represented the Democratic County Committee, I believe.

Q. You are sure he was not a member of the Board of Election? A. I am positive. Frank Dunn, Harry Simpson, and a couple of other gentlemen—I don't know their names—and myself.

Q. You know a young man by the name of Chadwick, don't you? A. Yes, sir; he was Supervisor.

Q. Chadwick was Supervisor of Election in that precinct? A. Yes, sir.

Q. Are you positive of that? A. Yes, sir; I am. Edward Bellingham was also a Supervisor.

By MR. DORN: Those are the ones that were appointed by the United States authorities. A. Yes, sir; those are the ones.

MR. CLUNIE: Who were the callers there? A. Frank Nixon and Mr. Durkee, I believe.

Q. Did you see any one else calling off while you were there? A. Yes, Barry called one, or two, or three off.

Q. Which was Barry? A. What politics?

Q. Yes. A. What position did he hold?

Q. Yes. A. I think he was Inspector or Judge.

Q. Who was he put there by? A. I don't know.

Q. For what party? A. He was a Republican.

Q. And he called off for that party? A. No, sir.

Q. Did you see any one else call? A. No, sir.

Q. Did you see Chadwick call? A. No, sir.

Q. You never left there? A. I never left there an hour.

Q. And you didn't see him? A. No, sir.

Q. And you are just as sure of that as you are of anything else you have sworn to? A. Yes, sir.

Q. And you are just as sure of that as you are that you did not go into that precinct to stuff? A. Yes, sir.

Q. It was not possible for him to do it and you not see it? A. I was not out an hour, I tell you, and I could see it.

Q. How often did you sleep at Smith's? A. Every night.

Q. You didn't go home a night? A. No, sir.

Q. Who slept with you? A. A man named Williams.

Q. Where is he now? A. He is in town here some place.

Q. Whereabouts? A. On Broadway, between Hyde and Larkin; I don't know the number.

Q. He moved at the time you did, did he? A. No; he lived there three months before election.

Q. But he moved out of Smith's house when you did? A. Yes, Smith went over to Berkeley, and we had to move out.

Q. And you swear positively you slept there every night from the time you went in there until you left? A. Yes, except one or two nights I stayed out all night. I slept nowhere except there.

Q. Don't you know, as a matter of fact, you did not go to that house until the sixth of October? A. I didn't say I moved in on the first.

Q. Yes, you did. You got a receipt here upon the first. A. That doesn't say I moved there.

Q. When did you move? A. I don't know exactly the date.

Q. Don't you know it was the sixth or seventh? A. I moved there the Saturday following the first, I believe.

Q. That is the sixth? A. I don't know.

Q. How did you come to get your receipt from the first of October? What was your idea in that, if you had not been there? A. I don't know; we usually do in paying bills and things of that kind.

Q. You didn't mind a peculiarity about a little thing like that? A. I don't know.

Q. Did you think you could give him a week's lodging? A. Not exactly. I suppose bills are paid on the first of the month, and I asked him how the bill was made out, and he said from the first to the first.

Q. You said a little while ago you were in that house about five weeks before election. A. About six.

Q. There is quite a difference between the sixth of October and the sixth of November, five weeks. You figure it at about five weeks? A. I said about.

Q. Don't you know, as a matter of fact, you were there only about twenty-nine days? A. No, sir.

Q. Don't you know, as a matter of fact, you were there only twenty-nine days, and don't you know you were not entitled to vote in that precinct? A. No, sir, I was over twenty-nine days in it.

Q. Don't you know you were? A. I am pretty sure I was.

Q. When were you there? A. I was there Saturday night following the first, I believe.

Q. How long was that? A. I don't know. It is over twenty-nine days.

Q. You say you know it is over twenty-nine days. How do you know it? A. I don't know how I know it. I think so, anyway. I would like to see a calendar and I can tell.

Q. You are sure you went in Saturday night? A. Yes, sir.

Q. It was not Sunday? A. No, sir.

Q. Did you ever sleep there after election?

MR. DORN: It was not very likely.

A. Let me see. I was out all night following election.

MR. CLUNIE: We ask to have it on record that we object to Mr. Dorn suggesting to the witness.

Q. Did you sleep there election night? A. I am not sure. I couldn't swear.

Q. Did you sleep there the second night after election? A. I am not sure. I couldn't swear.

Q. Did you sleep there the night after election? A. I don't think so.

Q. Don't you know, as a matter of fact, you never slept there a night after you voted? A. I think I did. I am not sure. I cannot swear.

Q. You won't swear you did? A. No. I was all in an uproar that week. I don't know where I was.

Q. While you were up there you had an interest in advancing Mr. Banks' interest and the Republican ticket? A. Yes, sir.

Q. You worked and did all you could? A. Yes, sir.

Q. And you went into the district, as I understand it, to have some fun in politics.

Cross Interrogatories.

By MR. DORN: Did you take any special interest in Mr. Banks or in the Republican ticket? A. My interest was more in the Republican ticket than anything else.

Q. Had you any particular reason to be particularly favorable to Mr. Banks, the man you said you did not know except to speak to him? A. No, sir; excepting through Mr. Cahill.

Q. And you didn't know Mr. Banks, and had no special interest in him at all? A. No, sir.

Q. You went over there, as I understand, that you knew the boys in that district? A. Yes, sir; I had lived there a number of years, and naturally I would like to be over there.

Q. At the time you voted and at the time you registered, did you know you would be in that district thirty days before the election? A. Yes, sir, I thought I would.

Q. You said a moment ago you were uncertain, and that you wanted to see a calendar. At the time you voted you were not uncertain, were you? A. I was certain. I said I was there at least twenty-nine days, and I want to know it now.

Q. You knew at that time you had been there thirty days, didn't you, and it is simply it has been some time, and you have forgotten about it? A. Yes, sir.

Q. Isn't that the reason for your present uncertainty on the subject? A. Nothing else.

Q. Did you go over there, as accused, for the purpose of gaining a residence for the purpose of voting for or against anybody? A. I don't know as I did.

Q. You went over there for the purpose of being in the place where you were acquainted with the boys? A. Well, I knew everybody, which is my reason more than anything else.

Q. And you recognized the fact that one vote for the Republican ticket there would be no different than a vote for the Republican ticket anywhere else? A. No, sir.

Q. And your reason for wanting to go there was to be among your acquaintances, where you had lived for fifteen years? A. Yes, sir.

Q. Did Mr. Banks ever ask you to go over there or to vote for him? A. No, sir. I think I was over there before Mr. Banks received the nomination.

Q. Were you promised anything by Mr. Banks? A. No, sir.

Q. Or had you any reason or inducement held out to vote for him? A. No, sir; none at all.

Q. Were you ever paid any money or given any consideration by Banks? A. Not a cent. I never received a cent from anybody.

Q. You say you lived in the house of a Mr. Smith. What was Mr. Smith's politics? A. He is a Democrat.

Q. Would you consider it likely, if you went over there to be a Republican stuffer, you would take up your residence in the house of one of your political enemies? A. I don't think so, he not being my politics.

Q. Harry Simpson, referred to as living in the house, was of what politics? A. He claimed to be a Republican, but he said afterward he voted for Sullivan.

Q. Do you know whether or not he was a Republican? A. He claimed to be a Republican.

Q. And he claimed afterwards to have voted for Sullivan? A. Yes, sir.

Q. Then, if there were any stuffers there, Simpson would be what we politely term a Democratic stuffer, wouldn't he? A. Yes, sir.

Q. You say Smith, who kept the house, was a Democrat? A. Yes, sir.

Q. Do you know whether he took any active part in the recent election? A. Yes, sir. He was assisting in making Mr. Sullivan's fight.

Q. Was he for or against Mr. Banks, the respondent, here? A. He was against Mr. Banks.

Q. Do you know whether he was or not active in the canvass? A. He was very active.

Q. He was active for Mr. Sullivan, and against Mr. Banks? A. Yes, sir.

Q. The man in whose house you lived? A. Yes, sir.

Q. And the man with whom you roomed, also voted for Mr. Sullivan? A. I don't know how Williams voted. I know he was making Reynolds' fight—another Democrat.

Q. Williams was making Reynolds' fight—another Democrat? A. Yes, sir.

Q. What office was Reynolds the candidate for? A. Assemblyman.

Q. This other gentleman, Williams, whom Mr. Clunie has called a stuffer, was there making a fight for Mr. Reynolds, a candidate for member of the Assembly? A. Yes, sir.

Q. On the Democratic ticket? A. Yes, sir; I don't know how he stood on the Senatorial vote.

Q. The proprietor of the house, Smith, was actively engaged in making Sullivan's fight? A. Yes, sir.

Q. Mr. Sullivan, the contestant in this case? A. Yes, sir.

Q. Williams, your room-mate, you say, was actively engaged in making Reynolds' fight? A. Yes, sir.

Q. The Democratic candidate for the Assembly? A. Yes, sir.

Q. And Simpson informed you that he voted in the Senatorial election for Sullivan, the contestant in this case? A. Yes, sir.

Q. Then if that was a house full of stuffers, the majority was not Republican by any means, was it? A. No, sir.

Q. Those were the men who lived in the house, were they? A. Those were the men.

Q. And you said the reason why you all left the house was because Smith left the house and moved to Berkeley? A. He moved a couple of days before election and we had to go.

Q. Mr. Smith, who was actively engaged in Sullivan's fight, stayed there until two days before election? A. Yes, sir; he roomed at the house until the election.

Q. And then as soon as the election occurred? A. He went over with his wife to Berkeley.

Q. He stayed there and worked and voted on election day for Sullivan? A. Yes, sir.

Q. And was pretty active? A. Yes, sir.

Q. Do you know how much money Mr. Sullivan paid Mr. Smith for his services there? A. No, sir.

Q. Did you ever hear him say? A. I heard that he got \$40, but I am not sure. I am not sure it was \$40; but I think it was \$40.

Q. You think it was in that neighborhood? A. Yes, sir.

Q. This Williams, whom you roomed with, told you he got \$40? A. Yes, sir.

Q. He was the one who was making the fight for Reynolds for the Assembly? A. Yes, sir.

Q. How much did Simpson get for making Reynolds' fight for the Assembly? A. He did not make any fight at all.

Q. He voted for Sullivan? A. Yes, sir; so he told me. He was a Republican Clerk.

Q. Did he tell you how much he got for voting? A. No, sir.

Q. Do you know how much Williams, who was making the fight for the Democratic candidate for the Assembly, got? A. No, sir.

Q. You never heard him say anything about it, one way or the other? A. No, sir.

Q. You never heard him say anything about it? A. No, sir.

Q. But you are sure that the Smith who was working for Sullivan, and whose house you roomed in, and who left after election, got \$40? A. Yes, sir.

Q. Would you think that was a good place to plant yourself in as a Republican stuffer? A. No, sir. I went over there more through sport than politics.

Q. And you were a bona fide resident in that precinct and district more than thirty days before election, were you? A. Yes, sir.

Q. And were entitled to vote there? A. Yes, sir.

Q. You received no consideration whatever for casting your vote? A. No, sir.

Q. And you cast it as you pleased, and without the influence of anybody? A. Yes, sir.

Q. Did Mr. Banks ever ask you to vote for him? A. No, sir.

Q. And you never had any inducement to vote for him, either one way or the other? A. No, sir.

MR. CLUNIE: We offer this receipt in evidence. It reads as follows:

SAN FRANCISCO, October 1, 1888.

Received of F. R. Conway five (5) dollars in advance for one month's room rent, at 1238 Broadway Street.

Paid, C. W. SMITH.

Redirect Interrogatories.

By MR. CLUNIE: You say you received nothing for your services over there? A. No, sir.

Q. Not a dollar? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. You worked in the Board for nothing? A. No, sir: what services do you mean?

Q. For your services over there? A. I got paid for being Clerk, certainly.

Q. How much were you paid? A. I got \$16 50.

Q. How long were you there? A. I was there during the count.

Q. Who paid you? A. I went down and had my warrant cashed at Max Goldberg's.

Q. That was all the money you received? A. Yes, sir.

- Q. There was no money paid extra to the officers there by anybody?
A. No, sir.
- Q. Didn't Mr. Banks pay you \$3 apiece extra? A. No, sir.
- Q. You are sure of that now? A. Yes, sir.
- Q. You say Smith was making an active fight for Sullivan. How do you know that? A. I could see him around talking about it.
- Q. What did he say? A. He was discussing the merits of the two men.
- Q. Tell us how he discussed it. A. I couldn't use the words exactly, except he would meet a friend, and say he was a pretty good fellow—vote for him—or something.
- Q. You say he told you he got \$40 from Sullivan? A. He mentioned it the day of election.
- Q. When did he tell you that? A. The day of election.
- Q. Where did he tell you that? A. In that barroom.
- Q. Whose barroom? A. At the corner grocery.
- Q. Who was there? A. Smith was there.
- Q. The Smith you are talking about, and who else? A. Certain others. I don't know who.
- Q. Did he tell this to anybody else? A. I don't know that he did.
- Q. How did he happen to tell you he got \$40 from Sullivan? A. He was talking there, getting a drink; speaking about it.
- Q. This was the day of election? A. Yes, sir.
- Q. And you were a member of the Board? A. Yes, sir.
- Q. And this occurred in the saloon? A. Yes, sir.
- Q. And you had left your duties inside and come outside to take a drink? A. No, sir. Mr. Simpson, the other Clerk, was on duty at the time.
- Q. This was while you were off duty? A. Yes, sir.
- Q. What time of day was it? A. In the afternoon.
- Q. What time in the afternoon? A. I couldn't say. Two or three o'clock.
- Q. Then you were not on duty then? A. I was not on duty; no.
- Q. How long were you out of the room? A. Of the polling place?
- Q. Yes. A. I left there about half-past twelve or one o'clock. I was on from seven until that time.
- Q. You say Smith told you he got \$40 from Sullivan to work for him? A. I think it was \$40. I said in the neighborhood of \$40.
- Q. Why do you think that sum, \$40, was mentioned? A. I think \$40 was mentioned. He got some money.
- Q. Do you swear Mr. Smith told you he got \$40 from Mr. Sullivan to vote for him and to work for him? A. Yes, sir; I am sure of it.
- Q. And you say he told you that on the day of election? A. Yes, sir.
- Q. In this saloon? A. Yes, sir.
- Q. This Simpson you are talking about was making whose fight? A. He was making nobody's fight in particular, but he said after election he voted for Sullivan.
- Q. Simpson told you he voted for Sullivan? A. Yes, sir.
- Q. Where is Simpson now? A. I don't know where he is.
- Q. Did he tell you he voted for Sullivan? A. He didn't tell me particularly. He told Cahill.
- Q. Did he tell you that? A. Not particularly.
- Q. Did you hear him say that? A. Yes, sir.
- Q. Whereabouts? A. In Wendt's barroom.
- Q. And he was a Clerk put there by the Republican party, and the man you let relieve you? A. Yes, sir.

Q. Before he ever went there, had he been for Sullivan? A. No, sir.

Q. Hadn't he told you he was for Banks? A. No, sir.

Q. Hadn't he told you he was on his ticket? A. No, sir.

Q. Didn't you and he talk about how you were going to vote? A. No, sir.

Q. Didn't you and he talk about being on the Board together? A. We spoke of it; yes, sir.

Q. Did he tell you how he got on? A. He got on at the same time I did, in the same way.

Q. Through Cahill? A. Yes, sir.

Q. And yet there was no intimation as to Sullivan? A. No, sir.

Q. Yet there were no inquiries made before he went on that Board how he would vote? A. No, sir.

Q. And you did not know anything about that? A. No, sir. I only knew he claimed to be a Republican: that is all.

Q. Didn't you think it very funny they would take two Republicans from the same house? A. I don't know. I was around there and knew everybody.

Q. And you say he did not mention getting any money from Banks? A. Not a cent.

Q. And you were not paid for your services? A. I got paid for my services.

Q. Cahill did not pay that to you? A. No, sir.

Q. You spent money around there, going around with the boys, just for the good of the party, did you? A. Well, yes, sir.

Q. You didn't get any money from anybody to do that? A. No, sir.

Q. You spent five dollars? A. Yes, sir.

Q. And it was all your own money? A. It was all my own money.

Q. You have had some talk with Mr. Banks since you were subpoenaed in this case, haven't you? A. I don't know. Yes, I spoke to him: "How do you do?" or something like that.

Q. Where did you talk to him? A. I don't know. Around the hall here.

Q. You didn't talk to him down town? A. No, sir.

Q. When was this subpoena served on you? A. Yesterday.

Q. What did you do with it after that? A. I kept it in my pocket.

Q. Where did you go? A. I went down town.

Q. Didn't you go to the Mint Saloon? A. No, sir.

Q. Did you see Mr. Banks? A. No, sir.

Q. You came here this morning and saw him? A. Yes, sir.

Q. What did you say? A. I said, "How do you do, Billy?"

Q. You had only met Banks once since the day of election? A. Yes, sir.

Q. What did he say? A. He asked me if they summoned me.

Q. What else? A. That was all.

Q. And you were here together fifteen minutes before the Court met, weren't you? A. No, sir.

Q. How long? A. About two or three minutes, until Mr. Dorn came.

Q. Didn't you tell Mr. Banks this time about the money this man had got from Mr. Sullivan? A. No, sir.

Q. You never said a word to him about that, or to Mr. Dorn? A. No, sir.

Q. You are positive of that? A. I never spoke to Mr. Dorn in my life.

Q. You are sure you didn't tell Mr. Banks about it? A. No, sir.

Q. Did you ever tell Mr. Banks about this \$40? A. No, sir.

Q. Do you swear that this Smith you were rooming with voted for Mr. Sullivan? A. I didn't see his ballot. I didn't see his vote.

Q. Do you swear Simpson voted for Mr. Sullivan? A. I didn't say it.
 Q. You swore that they both told you so? A. Yes, sir.

Re-Cross Interrogatories.

MR. DORN: You were asked about a conversation that took place here in the hall, and you say you were there a minute or two before I came. Did I speak to you? A. No, sir.

Q. And until you got on the stand, and I asked you the first question, did a word ever take place between you and I? A. No, sir.

Q. Did you ever see me in your life before? A. Yes; I believe I saw you in the Parlor of the Native Sons.

Q. Did we ever talk together? A. No, sir.

Q. You were asked if you had a conversation with Mr. Banks about your testimony. Did you have any such conversation? A. No, sir.

Q. Did he ask you what you were going to testify to? A. No, sir.

Q. Did you tell him what you were going to testify to? A. No, sir.

Q. Or anything about what your testimony would be? A. No, sir.

Q. You simply passed the time of day, and he asked you if you had been subpoenaed? A. Yes, sir; he was kind of surprised, and I walked up a few steps to you with him.

Q. And he asked you if you had been subpoenaed? A. If I had been summoned.

Q. And what did you say? A. I hauled out the document, and I said I didn't know whether Mr. Banks subpoenaed me or Sullivan.

Q. You did not know until now who subpoenaed you? A. No, sir.

Q. Did you know whether you were subpoenaed by Mr. Sullivan or Mr. Banks? A. No, sir.

Q. And you had no further conversation on the subject? A. No, sir.

Q. At that time I arrived, and you walked away? A. Yes, sir.

JAMES H. DUNN.

A witness on behalf of contestant, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Are you a Deputy Sheriff of this city and county? A. Yes, sir; I am.

Q. And have been how long? A. Six years.

Q. You have been a deputy during Mr. McMann's administration, haven't you? A. Yes, sir.

Q. Where has been your position? A. Bailiff of Department No. 3.

Q. You were there as such Bailiff during the time the contest was going on of O'Donnell for Mayor of this city and county? A. I was, sir.

Q. What was your position there? A. Stringer.

Q. Explain to us how that contest was conducted. How did they get the ballots, and what was done? A. In the first place, ballots were handed to Judge Finn, and from there they were handed to the Registrar. He opened the packages, cut the string, and passed them to the caller.

MR. DORN: When Mr. Ryan appears to sign his testimony, there is one question I omitted to ask that I would like to be allowed to ask.

JUSTICE STAFFORD: Very well.

WITNESS [continuing]: He would call the names of the Mayor, hand the ballots to the counsel for the contestant, and he would hand them to me, and I would string them. That was the process.

By MR. CLUNIE: You were able to see every ballot that was cast, were you? A. I did; yes, sir.

Q. And every ballot that was counted in that contest? A. Yes, sir.

Q. Were you present in that Court-room, stringing, when the Seventh Precinct of the Thirty-third District was being counted? A. I was.

Q. Did you handle those ballots? A. I did.

Q. Did you look at each ballot as it came out? A. I did.

Q. Did you notice anything peculiar on those ballots? A. With relation to the Senatorial part, I did.

Q. Just state what it was. A. I noticed that there were about thirty-five, probably forty Democratic ballots, with Mr. Sullivan's name scratched and no one's name substituted—scratched with a pencil.

Q. Those were the regular Democratic tickets? A. They were.

Q. And on that Democratic ticket J. J. Sullivan appeared as the nominee for Senator? A. Yes, sir.

Q. And no one was substituted? A. No, sir.

Cross Interrogatories.

By MR. DORN: Did you make any further observations with regard to the other precincts of the district? A. I did.

Q. Didn't you find that in a very large number of cases the name of Mr. Banks was erased by rubbing a dirty thumb or a thumb with a pencil on that? A. I cannot say that I did.

Q. Can you say that you did not? A. No, I cannot.

Q. Then what you recollect specially looking out for was Mr. Sullivan's name? A. I will tell you what drew my attention to that: There were two gentlemen; one was taking a snap tally, one for each candidate; that is what drew my attention. In fact, I drew the attention of that gentleman, Mr. Maxwell, [indicating] there, first.

Q. In the different precincts, about how many times did you observe the name of Mr. Banks, the respondent here, scratched? A. A great many times; that is, in the different precincts.

Q. Was it scratched two hundred and fifty times? A. That I couldn't say.

Q. Of course you have to guess. Would you say to the best of your knowledge and belief, two hundred times? A. In the whole district?

Q. Yes. A. I think that might have been, but I couldn't swear positive.

Q. You observed it was erased a large number of times with a pencil, and no name substituted? A. I didn't say with the pencil.

Q. How, then? A. It might have been ink or might have been pencil; but the reason I noticed this particularly was there were so many scratched with the pencil.

Q. Isn't it the fact that there are more scratched tickets than there are straight ones? A. Yes, there are more scratched than there are straight.

Q. Wouldn't you swear that there are more scratched tickets? A. I could not swear.

Q. That is, to the best of your knowledge and belief? A. That is, taking the whole.

Q. That is, taking the whole fifty-three thousand or fifty-four thousand? A. I believe there were more scratched ones.

Q. Aren't there a good many more scratched tickets than straight ones?
A. That is, taking them as a whole.

Q. Isn't it a common thing to find a name or a number of names erased, and in many of the cases no name substituted? A. Yes, sir.

Q. It is a common thing? A. Yes, sir; I have seen the whole ticket scratched with the exception of one name.

Q. And nothing substituted for it? A. Nothing substituted.

Q. Haven't you frequently seen one or two names erased and nothing substituted for it? A. I have.

Q. As a matter of fact, wouldn't you say, to the best of your knowledge and belief, as the ballots came out, precinct after precinct, that there are more names scratched which have no name substituted than those that have a name substituted for them? A. No, I couldn't say that, not taking it as a whole. In this case—say a district where there was a fight made for one particular candidate—that might be. You might find a lot of people would say, "Well, I don't like this man, but I won't vote for the other man, anyhow."

Q. In particular precincts where an active fight is made for a particular candidate, isn't it the case in some precincts that because of such a fight the ticket is scratched a number of times? A. Yes, sir.

Q. In this precinct it would be one of the Senators, in another a Judge, etc. Haven't you observed that very frequently? A. I have.

Q. And haven't you observed that in a precinct where a man resided himself, or had a particular number of friends, that his particular name would be frequently substituted for that of his opponent a number of times, and in that way? A. Yes, sir.

Q. In other words, ballots are liable to run in that way? A. Yes, sir.

Q. And it is not a remarkable thing that in such an active canvass such a thing should happen for any man? A. No, it is not remarkable.

Q. And such a thing might happen without any wrong being done at all? A. No. It might all happen without any wrong being done, for what I knew.

Q. And because a particular number of ballots have been scratched, it is not a reason that any wrong was done? It might result, in other words, from an active canvass before election? A. Yes, it might.

Q. And between the two opinions, one man might in one way, and one man in another way? A. Exactly.

Q. In other words there is nothing which would enable you to swear or give you any ground for anything more than a mere surmise, because the ballots came out that way? A. That is all.

Q. And the same thing happened in different precincts, to different candidates? A. Not that way; it happened that way but there were other people substituted.

Q. You don't think it happened as many times? A. No, but it happened a great many times.

Q. A great many times similar things happened in a great many precincts? A. Yes, sir.

Q. When did Mr. Maxwell commence to sit at that table in that recount? A. That I couldn't tell.

Q. Didn't he commence about the time you reached the Twenty-first Senatorial District? A. That I could not tell you. The first thing I know he came up and asked me if he could sit down there, and he said he wanted to take the tally.

Q. What tally did he want to take? A. I did not know then.

Q. Did he not tell you? A. He did afterward. He told me he wanted to take the ballot in the Sullivan count. I don't believe he took Banks' count.

Q. He stood right at the end of the string or the ballots where they were being strung? A. He did.

Q. Didn't he have a lead-pencil in his hand the whole time he stood there? A. He did not.

Q. Didn't you call back the names and tell him what to tally? A. Yes, sir.

Q. In other words, you assisted him to tally? A. Yes, sir.

Q. You are a Democrat, are you not? A. Yes, sir.

Q. You have been an active politician for the last six years, haven't you? A. I took an active part.

Q. Where do you live? A. No. 1119½ Mission.

Q. You are pretty well acquainted with Mr. Maxwell? A. No, sir.

Q. You never saw him around there? A. Oh, yes.

Q. You know he is an active politician? A. I don't know.

Q. You know he is active among the boys, the same as you are? A. No, sir.

Q. You know he was a deputy prior to election, in the Registrar's office, don't you? A. No, sir.

Q. You know it now, don't you? A. Yes, sir; I know he was in the City Hall about—

Q. [Interrupting.] You know you were friendly to him in assisting to call that? A. No; I assisted Republicans too.

Q. Did you assist Republicans? A. Yes, sir; I did.

Q. Did you call off Mr. Banks' tally? A. No, sir; I did not, because he did not ask me.

Q. You called off for Sullivan? A. I did a portion of the time; not all the time.

Q. And you assisted in taking it? A. I did.

Q. The whole time you were calling off this tally for Mr. Maxwell—
A. [Interrupting.] Mind you, I did not call off the whole of it.

Q. You did not call off the whole of it because he probably got expert and did not need your assistance? A. Once in awhile he might have said, "Well, what is that?" and I said, "Well, that is either Sullivan or Banks."

Q. Once in awhile when you were calling off for him, there was a Republican standing at the other side, taking off Banks' tally, was there not?
A. He was taking off somebody's tally.

Q. Don't you know Maxwell stood there and took off Sullivan's tally, and don't you know that the other man was a Republican and stood there for the purpose of taking off Banks' tally, and didn't you know it at that time? A. I don't know whether he took Banks' or not.

Q. Wasn't Ray Falk and George McComb standing right there behind the caller? A. He was not behind the caller.

Q. Who was the caller that stood behind you? A. George McComb was there.

Q. Do you know what he was there for? A. No, sir.

Q. You thought he was there for fun? A. I knew he was there for some friend.

Q. And you did not know what tally he was taking off? A. No, sir.

Q. Did you assist him in taking off Banks' tally? A. No, sir, I did not; not in the Banks tally.

Q. In whose tally did you assist him? A. In the Clunie-Phelps. I don't know whether McComb took off Banks' tally or not.

Q. When the Second Precinct of the Thirty-third District was counted, wasn't Lou Jacobs standing there, taking off Banks' tally? A. He was there.

Q. Don't you know he was taking off Banks' tally? A. I don't know.

Q. You don't know what he was taking off? A. He didn't tell me.

Q. He was there during that time? A. He was there, yes.

Q. Wasn't Ray Falk there taking off a tally at the same time? A. He was taking off a tally, but not behind me. Jacobs was there when McComb wasn't there.

Q. Was Maxwell there? A. Maxwell was there; yes, sir.

Q. Maxwell was there the whole time? A. Yes, sir; so was Banks, pretty much all the time.

Q. Was anybody else taking off the tally for Mr. Sullivan at that time, except Maxwell? A. There was another man sat there. I think his name was Phelan.

Q. What was he doing? A. He was keeping a snap tally.

Q. Do you know whose snap he was keeping? A. No, I do not.

Q. Then, as a matter of fact, there were two Republicans taking off tallies there, and one Democrat. Is that it? A. I don't know whether they were Democrats or Republicans, sitting down in the chairs.

Q. Wasn't Phelan there during the whole count of the Twenty-first Senatorial District? A. He was there during the whole count.

Q. Was Maxwell there any time except during the count of the Twenty-first Senatorial District? A. I don't think he was.

Q. You think he was there just at that time? A. During the Senatorial fight. Then I think he went away.

Q. In the Sixth Precinct of the Thirty-third the Court was specially convened for the purpose of counting the vote for Mayor, wasn't it? A. It was.

Q. And wasn't there a very large fraud discovered in the Second Precinct of the Thirty-third against O'Donnell? A. I couldn't tell you now. There were four or five precincts where there were very large frauds.

Q. In the Second Precinct of the Thirty-third wasn't O'Donnell robbed out of eighty-one votes? A. I couldn't tell you the precincts, but I know it was one of them.

Q. It was one of the precincts in that neighborhood? A. Yes, sir.

Q. About that time there were Maxwell, and McComb, and Ray Falk taking off tallies during that time? A. I couldn't tell you whether it was Ray Falk or Jacobs that relieved each other.

Q. At that time wasn't there a conversation between the people that were taking off snap tallies? A. They were engaged in conversation.

Q. Didn't you learn from them at that time that the Republican candidate for the Assembly and the Republican candidate for Senator had been robbed out of votes in that precinct? A. Who was the Republican candidate?

Q. Mr. Banks was the candidate for Senator and Henry Martin was the candidate for Assemblyman. A. The Republicans said they gained so many votes, and Maxwell and the other gentleman said Sullivan gained so many votes.

Q. Wasn't it stated and announced there, as the result of the tally, that Banks gained eighty votes in that precinct? A. I don't think so.

Q. Out of which he had been defrauded by the count. You don't remember that? A. No, sir.

Q. If it had been something that Sullivan gained you would have remembered it? A. No, sir; I would not. I have known Mr. Banks for about fifteen years; we have been very friendly together, and I ain't taking any advantage of him at all.

Q. I don't suppose you are taking any advantage of him, and that is all we are grumbling about, and if all the Democrats were as you were—as fair as you—we would not need this trouble, but some of them did take advantage and we want to find out who they were. A. No; I don't think I ever heard any remark like that. If I did, I don't remember it.

Q. You know Mr. Maxwell tolerably well for a casual acquaintance, don't you? A. I never had an introduction to him in my life; I just spoke to him during the recount. I don't think I ever spoke to him before. I knew that there was such a man as Mr. Maxwell, and I know him when I meet him.

Q. You met him every day there when he was taking off that tally, didn't you? A. I did; yes, sir.

Q. He is generally a pretty calm, quiet man, isn't he? He is not generally excitable in his nature? A. I did not see anything excitable there.

Q. You went on with your business there, and he took off his snap tally in a business-like way, did he? A. Yes, sir.

Q. Did you observe him during the time the count was being taken in the Second Precinct of the Thirty-third District? A. I suppose I did.

Q. Don't you know when the result of the count was known for Senator, that Mr. Maxwell got very much excited and got very red in the face, and showed every sign of being troubled? A. I couldn't say.

Q. You were looking at something else? A. I had plenty to do myself, without noticing the expression of Mr. Maxwell's face. I know there was one precinct where Mr. Maxwell said Sullivan got so many votes, and there was one where Mr. Banks said he got so many votes.

Q. Do you remember what particular precinct? A. No, sir. I don't remember any particular precinct except the one I told you of, and that was the Seventh of the Thirty-third; and it was I that drew Mr. Maxwell's attention.

Q. You called their attention to that? A. Yes, sir.

Q. Any precincts in which Republicans gained you did not draw attention to? A. I made the remark that there must have been queer work there.

Q. Any precincts where Republicans gained you did not notice? A. That was not my business.

Q. That was not your political faith. In other words, you were not hunting evidence for Republicans? A. I was not; I was not hunting evidence for Democrats there.

Q. But when you found some you took pains to notify them of it? A. I drew their attention to it; that is all.

Q. You drew their attention to it in a mild kind of way? A. I said: "There was queer work going on here."

Q. You were not particularly anxious they should find out, and so busy you could not see Maxwell's countenance, and you did call the attention of Democrats to the fact that there was queer work in this precinct? A. Yes, sir.

By MR. CLUNIE: You spoke about there being two hundred scratched ballots in the district for Banks, or something of that kind? A. I did not say that; I said that I thought there might be that many. There might be more or less; I don't know.

Q. If you mean they scratched Banks, you mean the name of Banks was scratched, the name of Sullivan was written, do you? A. Yes, sir.

Q. You don't mean the name of Banks was scratched and nothing was substituted? A. No. Mr. Dorn didn't ask the question that way.

By Mr. DORN: As a matter of fact, then, you did not find any ballots in the Twenty-first Senatorial District where Banks' name was erased, unless Sullivan's name was put on? A. I didn't say that either.

Q. Sometimes they were one way and sometimes the other? A. Sometimes Banks' name was scratched and nobody's name was substituted.

Q. And sometimes Sullivan's name was scratched and Banks' name was substituted? A. Yes, sir. I never noticed in any precinct, except the precinct I told you.

Q. You must have noticed in the different precincts? A. I did; Sullivan was scratched and Banks was substituted, and Banks was scratched and Sullivan was substituted; and sometimes both names were scratched, and blank.

Q. And sometimes both candidates were scratched and neither substituted? A. Yes, sir.

Q. You have had a good deal of experience in observing papers and have been around Courts for the last six years, haven't you? A. I have.

Q. You observed those ballots in that Seventh Precinct of the Thirty-third District pretty carefully, didn't you? A. I didn't examine them any more than that.

Q. Your attention was called to the fact that Sullivan's name was frequently erased with the pencil, did you? Did it appear to have been hurriedly or carefully? A. It appeared to be done hurriedly.

Q. Knowing the way ballots are counted, and what you know of their being counted by a Precinct Board, would it be your judgment that those ballots had been scratched before or after they had been counted and put on the string? A. I couldn't say.

Q. It appeared to have been done hurriedly? A. Yes, sir. I couldn't tell whether those ballots had been scratched after they were strung.

Q. You have been present at Precinct Boards at the counting, haven't you? A. I have, a number of times.

Q. You know that they are taken out of the box by the Inspector, and after the preliminary counting and marking has taken place? A. Yes, sir.

Q. And that they are laid on a board and counted immediately? A. Yes, sir.

Q. That they are then passed over on a board and put upon the string? A. Yes, sir.

Q. Would it have been possible, after those ballots had been placed on the string and after they had been counted, to have made these erasures?

A. Would it have been possible?

Q. Yes, sir. A. Certainly.

Q. And if they had been so done they would have been done hastily and incautiously? A. Yes, sir; that was about the way they appeared to be.

Q. If Mr. Dykeman, a Democratic watcher, had sat and watched those ballots after they had been counted, and had had a pencil in his hand, he would have had an opportunity to do just this kind of work, wouldn't he? A. The caller?

Q. No. After they had been counted and gone on the string. A. Yes, sir.

By MR. CLUNIE: Say that in a precinct there is a Board of Election officers, one of them is engaged in calling tickets off. You know how they call always. A. Yes, sir.

Q. The man who is calling tickets was detected in the act of calling off on a ticket the name of Banks where the name of Sullivan was? A. Yes, sir.

Q. Another officer in the same precinct is detected in the act of tallying votes cast for Sullivan for Banks? A. Yes, sir.

Q. Another man is a member of the Board—Republican member, who has only lived in the precinct twenty-nine or thirty days. He testified he came in there to have some sport, and they are all Republicans. Would you say that that work which you say is queer work was done by those people around, in your opinion? A. I don't know. They might have stood in together, a couple of them.

Q. What is your opinion? A. That is my opinion.

Q. That it was done by them, and they stood in together? A. Yes, sir; I think it would be very easy.

By MR. DORN: Suppose that there was a Board composed equally of Republicans and Democrats in that precinct, and suppose that at a certain time there was a very active and able worker for the Democratic party who had received ten dollars for his services on that day, and that during the time the Republicans were out of the room temporarily that this man Dykeman handled the ballots, and that afterwards there were found to be erased which would operate in favor of the Democratic party upon a recount or retally. Who do you think would have made the erasures? A. I don't think it was the Republican's work. They couldn't do it very well if they weren't in the room.

J. P. CHADWICK.

A witness called for contestant, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Mr. Chadwick, will you please take a piece of paper and write your name and the name of Davies, Page, and Russell for me? Answer—Yes, I will. [Does so.]

Q. I would like to have it in ink. Write Laumeister's name, too. Write the two words "Democratic tickets." [Witness does so.]

Q. Now, write the words "Yourself and the other nominees." [Witness does so.]

Q. What is your full name? A. James P. Chadwick.

Q. Where do you live, sir? A. Where do I live now?

Q. Where did you live at the time of election, and where do you live now? A. I lived, at the time of election, 1720 Hyde.

Q. How long had you lived there? A. About three years and a half, I guess.

Q. What precinct is that? A. The Fifth Precinct.

Q. Of what district? A. The Thirty-fourth District.

Q. That is in the Twenty-first Senatorial District, is it not? A. Yes, sir.

Q. You lived there at the time of election, didn't you? A. Yes, sir.

Q. Where were you on election day? A. I was in the polling place.

Q. Where was that situated? A. Broadway and Hyde.

Q. What was your business there? A. Supervisor of Election.

Q. Were you a Marshal or Supervisor? A. Supervisor.

Q. You were a United States Supervisor of Election? A. Yes, sir.

Q. Do you know Mr. Banks? A. I know him slightly.

Q. How long have you known him? A. He is in the same business I am. I have known him ten or a dozen years.

Q. You have known him how long? A. About ten years.

Q. Did you know him at the time he was a candidate for State Senator from the Twenty-first Senatorial District? A. I did not know it until I saw it in the paper.

Q. You did not know that he was a candidate prior to that time? A. I heard it talked of.

Q. What are your politics? A. Republican.

Q. You are a Republican? A. Yes, sir.

Q. You saw in the paper that Mr. Banks had received the nomination for Senator of the Twenty-first District, did you? A. Yes, sir.

Q. Did you call on him then? A. I did not.

Q. How long after you saw it in the paper did you see Mr. Banks? A. I don't remember. I believe I met him one evening. He came down Leavenworth Street and I was standing at Broadway and Leavenworth, and talked with him a little while.

Q. What did you say to him? A. I wished him success, and that is about all.

Q. What did he say to you? A. He thanked me, and went on down the street; I don't know where he went.

Q. That was all that occurred? A. That was all.

Q. There was nothing said at that time about your using your influence in his behalf? A. Not a word.

Q. When did you see him again? A. I suppose I saw him several times before the election.

Q. You suppose you saw him several times before the election? A. I met him at different places down town, or corner of Leavenworth and Hyde Streets.

Q. Did you have any talks with him? A. I might have bid him the time of day, but that is about all.

Q. Did you have any talks with him in relation to his candidacy for Senator? A. How do you mean?

Q. Did he tell you then that he was a candidate, and that he wanted you to get out and work for him? A. He was already a candidate.

Q. Did Banks tell you that: did he say, "I am a candidate for State Senator against Johnny Sullivan: I want you to get out and work for me." Did anything of that kind occur? A. He had no reason to tell me.

Q. I ask you what he did? A. No, he never asked me to work for him.

Q. What did he say to you the second time? A. I don't know.

Q. You don't know what he said the second time? A. I know he never asked me to do anything for him.

Q. He didn't ask you to get out and fight for him? A. He knew I was a Republican. I didn't take any particular interest in his fight.

Q. Did you have a third conversation with him? A. I told you I had six or seven.

Q. You have given us two now. Give us the next one. A. I never was in one conversation that lasted over two or three minutes with him.

Q. Did you and he ever talk as to what he would do for you if he was elected Senator? A. I did not.

Q. Did he ever tell you he would put you in the Sheriff's office? A. He did not.

Q. Did any one on his behalf tell you? A. No, sir.

Q. He never said that? A. No, sir.

Q. Did any one on his behalf? A. No, sir.

Q. You have not written any letters to any one stating that? A. No, sir.

Q. You haven't written any letters to any one? A. No, sir; I did not.

Q. You are sure of that? A. Yes, sir.

Q. You state that at no time Banks asked you to work for him for State Senator? A. He did not.

Q. You were a member of the Board of Election? A. I suppose I was, to that extent.

Q. What do you mean? A. I suppose as Supervisor of Election, I was supposed to see a fair count, and I merely had a voice in the Electors and Congressmen.

Q. That was all you had to do, was to see they had a fair count, wasn't it? A. Yes, sir.

Q. You knew that at the time it was counted, did you not? A. Yes, sir.

Q. You knew you had no voice in the Board other than that? A. I knew I had no voice, other than seeing that everything went on fairly.

Q. Don't you know you had no voice in that? A. Yes, sir; outside of Congressmen and Electors.

Q. Didn't you know you had no right to count votes or read them? A. That I don't know.

Q. You knew it, didn't you? A. I don't know it now, and I did not know it then.

Q. Did you count any tickets or read them, in the Fifth Precinct of the Thirty-fourth Assembly District, on the election held on the sixth of November, 1888, did you really count or read any tickets there? A. I don't know whether I did.

Q. Will you swear you did not? A. I cannot remember. There were several people counted; one or two people called off ballots; I cannot remember.

Q. Don't you think that would be a matter you could remember, if you sat down in a chair and took a ballot from a man and read it all the way through? You don't think you would remember that? A. There was so much happened there in two or three days that I can't remember all that happened.

Q. There were a good many candidates on that ticket, were there not? A. Yes, sir.

Q. It would take you some time to read a ticket, wouldn't it? A. I suppose so.

Q. And you cannot recollect whether you read any tickets there or not? A. I cannot recollect.

Q. What is your recollection? A. I may have, and I may not.

Q. What is your recollection of it now? A. It is that I did not.

Q. You are not positive of it? A. No, sir.

Q. One way or the other? A. No, sir.

Q. Don't you know you did read it and that some one stopped you? Don't you remember that? Don't that recall it to your mind? A. Come to think of it, there was one evening there that I was asked to call off a few ballots, and a man by the name of Potter made an objection to the Supervisor calling off the ballots.

Q. Then you did call a few? A. No; I believe I sat down to call and he made an objection.

Q. At any other time did you attempt to call, when Potter was not there? A. I don't recollect.

Q. You recollect distinctly having sat down to call on that one occasion? A. Yes, sir.

Q. Anything else you cannot recollect about? A. I cannot.

Q. About five P. M., one of the days during which the count of the votes cast in the Fifth Precinct of the Thirty-fourth District had been going on, while Mr. Dunn and Mr. Conway were Clerks, didn't you sit down and call off the ballots while people in the room were drunk and asleep?

MR. DORN: I ask that he be required to be definite in this; that he specify whether he means the Board of Election were asleep, or the bystanders were asleep and drunk.

MR. CLUNIE: I decline to allow Mr. Dorn to instruct me how to ask the questions.

A. I don't remember.

Q. You don't remember that? A. No, sir.

Q. Do you remember the fact of the people being drunk in the room? A. What time?

Q. Any day the count was going on? A. There was one day four people came into the polling place that were drunk; they were not members of the Board, though.

Q. Was there any liquor used by the Board? A. I don't remember seeing any.

Q. Did you use any while you were there? A. Use any liquor?

Q. Yes. A. No.

Q. Did any of the Board use it? A. I didn't see any.

Q. You are sure about the fact of four people coming in drunk? A. I won't say they were drunk; there was one of them drunk.

Q. You are certain there were four people? A. They were a little bit under the influence of liquor.

Q. I refer to the number of people. You are certain that there were four people? A. Yes; there might have been six.

Q. Why did you say four? A. Well, I can remember four distinctly.

Q. Do you remember who was calling when those four people came in? A. I do not.

Q. Was Frank Dunn calling, and Fred. Conway, or were they tallying?

A. I know they were Clerks there, but I don't remember what time they were on or what time they were off.

Q. You don't remember who was tallying when this thing occurred—that these people came in drunk? A. I do not.

Q. I would ask you if it is not the fact that at the time those four people came in that you say were drunk, and while they were in the room, if you did not sit down in the place of the man who was calling ballots, and for some time there commence and take a Democratic ballot, for instance, and where the name of Sullivan was printed on, if you did not call the name of Banks right along? A. No.

Q. You are sure of that, are you? A. Sure of what?

Q. That you did not do that? A. I don't remember calling off the ballots at all. If I did, I know I wouldn't call them off wrongly, if I did call them off.

Q. But you remember distinctly you did not call any ballots off wrong, but you don't remember if you called them off right or not? A. I don't remember whether I called off any or not; but if I did call off any, I called them off right.

Q. When that occurred, didn't you commence at the head of the ticket and call the Congressman wrong, then called Banks wrong, then called Davies wrong, then called Launneister wrong, then called Russell wrong, then called Page wrong, and then let the rest of the ticket go in as it was? A. No, sir.

Q. You did not do that? A. No, sir.

Q. Didn't you do that to the number of twenty-six votes? Didn't you call twenty-six tickets that the name of Sullivan was on, for Banks, and that they so tallied in that precinct at that time? A. I did not.

Q. Did you have a pen at that time, or a pencil that day, do you remember? A. I don't believe I had a pencil at all.

Q. Have you got a gold pencil in your possession? A. No, sir.

Q. Did you have one in your possession that day? A. No, sir.

Q. Did you have a gold pen? A. No, sir.

Q. You didn't have any of those in your possession at all? A. No, sir.

Q. On twenty-six tickets didn't you scratch the name of Mr. Sullivan off and insert the name of Mr. Banks with a gold pencil? A. I did not.

Q. With a pen, then? A. No, sir.

Q. That you held between your first and second fingers? A. No, sir.

Q. You didn't do that? A. No, sir.

Q. Did you see Mr. Banks after the election? A. I have seen him a dozen times.

Q. Immediately after the election, and after the count was over? A. I believe I saw him the next night. He came down. I believe I congratulated him, and he said, "Sullivan says he is going to contest my election." That is about all he said.

Q. Where did that occur? A. I think it was on Broadway and Leavenworth somewhere.

Q. Wasn't it Broadway and Hyde? A. It might have been.

Q. Wasn't it in the saloon there? A. I don't think it was in the saloon at all.

Q. Didn't you and Mr. Banks have a conversation, shortly after the count was over, in a saloon corner of Broadway and Hyde, and didn't you there inform Mr. Banks of these facts? A. I did not.

Q. Didn't you and Mr. Banks have a drink there shortly after the election? A. I don't remember ever having a drink with Mr. Banks in my life.

Q. Will you swear you did not? A. I will not swear to it, but I am pretty positive.

Q. Will you swear you and Banks didn't have a drink out in that saloon, corner of Broadway and Hyde Street, after the election? A. I am pretty positive we did not.

Q. You are pretty positive that you did not, but you won't swear on it? A. No, because I can't remember what happened two or three weeks ago.

Q. There is a saloon corner of Broadway and Hyde, isn't there? A. Yes, sir; I go there occasionally.

Q. Whose saloon is that? A. It is kept by a man by the name of H. A. Wendt.

Q. You are usually there in the mornings, aren't you? A. Well, I am sometimes there in the morning, sometimes in the evening, and sometimes on Sunday.

Q. Don't you make it a business usually to go in there and get a drink about eight o'clock in the morning? A. I do not.

Q. You have never done that at all? A. I did about a year ago, when I lived at 1720 Hyde.

Q. Since the election, haven't you done it? A. I have been in there several times.

Q. About that time? A. Yes; I have been in there different times, no regular time, within the last year.

Q. You say you have never written any letters since the election? A. I have not.

Q. To any person? A. I have not.

Q. You know Mr. J. J. Sullivan, don't you? A. I know him by sight; yes, sir.

Q. You know who he is? A. I know that he was running for Senator.

Q. Did you ever write any letters to him since the election? A. I did not.

Q. Look at that letter [showing], and tell me if that is your writing or not? A. No, sir.

Q. You swear positively you did not write that letter? A. No, sir.

MR. CLUNIE: We offer that letter in evidence.

MR. DORN: We object to the introduction of that letter, on the ground that there is no proof of the authenticity of the letter or of the author of the letter.

MR. CLUNIE: I offer it. I want the reporter to take it down.

Q. Did you write a letter in the following words to the Hon. J. J. Sullivan, Esq.:

SAN FRANCISCO, December 7, 1888.

Hon. J. J. SULLIVAN, Esq.,

DEAR SIR: Hearing a rumor to the effect that you were going to have a recount or contest for your seat in the next Senate (*for it is yours*), I will impart to you a little knowledge that I possess as to how the count was conducted in the Fifth Precinct of the Thirty-third District. Rumor had it (*and I think it is the truth*), that Mr. Banks, if elected, was to put a man named Chadwick in the Sheriff's office, if he was elected. That was right enough, and this man Chadwick worked hard to get votes for Banks. Well, all right, still. The polls closed and the count commenced. A man named Durkee calling them off until 10 p. m. Then a man, Bellinton or Bellingham, called off until 3 p. m. Then he and Mr. Potter went off until 5 p. m. I don't know where they went, and then commenced the dirty work. A young man named Frank Dunn and Fred. Conway were Clerks. It was then Chadwick sat down and began to call off the ballots. There were four people drunk and asleep in the room, and I myself was asleep with one eye open. Although not an election officer, I was interested in the Superintendent of Streets, Mr. Ashworth, and was afraid of what Chadwick might do. I got careless. But Democratic tickets, when in this man's hands, were in a bad place. He started in from Congressman and then called Banks for Senator. The next was Laumeister, the next Davies, the next Russell, and the next Page, and then let the rest of the ticket go in as it was. Well, yourself and the other nominees mentioned, each lost twenty-six votes. He made the scratches and put Republican names with a short gold pen held between his first and second fingers. Banks knows it. Tell him point blank, accuse him of knowing it, and tell him that you know that he and Chadwick had a drink and laughed over it at Broadway and Hyde Streets, and see the effect. Examine the ballots and on twenty-six of them you will swear the names were written by the same hand above mentioned. Now, I would advise you to make a quiet investigation in this way: These people are generally there about eight o'clock in the morning. Accuse Banks point blank of knowing of this affair, and have a couple of men to watch his move-

ments, and also have some one quietly say to Chadwick that he robbed the Democratic nominees for Senator, Congress, Sheriff, County Clerk, Recorder, and District Attorney, twenty-six votes apiece, and have a man watch his movements after that, and see the result. Tell them both that you know positively that it was done, and you will see that one will be trying to find the other to form a plan of defense. I live in the precinct and will see the effect in Wendt's saloon, and will give you the points at the proper time; if necessary, I will go before a Senate Committee. Follow my instructions.

A REPUBLICAN.

Q. Did you write that letter? A. I did not.

Q. You did not write that letter? A. I did not.

Q. And that is not your letter that I showed you? A. Is that it?

Q. That is the letter [showing]. A. No, sir.

Q. And you did not write that? A. No, sir.

MR. DORN: I ask to see the letter.

MR. CLUNIE: And I decline to let you see it at this time.

Q. Is that your writing on this envelope [showing]? A. That is not.

Q. You are positive of that? A. Positive of that.

MR. DORN: Will you let me see that?

MR. CLUNIE: Yes, I will let you see the envelope.

Cross Interrogatories.

By MR. DORN: You say that to the best of your knowledge you did not call the ballots at all in that precinct? A. I did not.

Q. How about the statement in this letter? A. The man must have been crazy, whoever it was, I think.

Q. What is that? A. I think the man must have been crazy that wrote it.

Q. Did anything of the kind ever happen in that precinct? A. He was right as far as Mr. Durkee going off at twelve o'clock and Jim Bellingham, the Democratic Inspector took his place and he called off the ballots until about six the next morning, with the exception of perhaps a half an hour's time the Board adjourned to take a rest. That might have been fifteen minutes.

Q. During the time the Board adjourned did they leave the room, or leave the ballots in anybody's else charge? A. They did not.

Q. They simply rested and remained at their post? A. Yes, sir.

Q. Having thought it all over did you call off any ballots at any time? A. I don't believe I did.

Q. If you did call off any ballots at any time, either Republican or Democratic, did you call them off as they appeared? A. If I did, I should of called them off properly as they appeared.

Q. Did you have any short or long gold pen there between your first and second fingers, or any other fingers? A. No, sir; I never had one in my life.

Q. Did you at any time change, or alter, or interfere with any of the ballots in that precinct? A. I did not.

Q. How long have you known Mr. Banks? A. Do you mean know him by sight?

Q. No; personally, to talk with him? A. I can remember him for ten years.

Q. Have you ever been what you would call a friend of Banks, on personal friendly relations with him, or was your acquaintance a friendly speaking acquaintance? A. Nothing more than an acquaintance.

Q. Had you any special or any other kind of interest in his election? A. I hadn't, any more than he was a Republican.

Q. What business are you in? A. The architectural business.

Q. Mr. Banks is in the same business, is he not? A. He is.

Q. Is that the way in which you happened to know him? A. That is the way I have known him.

Q. You, as an architect, simply knew that there was another architect by the name of Banks? A. Yes, sir.

Q. That was about the sum and substance of your acquaintance with him? A. It is.

Q. And according to your best memory you have never had the friendship or friendly relations with him, before or after election, to ever take a drink with him in a saloon? A. I have not. I can't remember ever taking a drink with Mr. Banks.

Redirect Interrogatories.

By MR. CLUNIE: Where do you reside? Answer—I reside at 1720 Hyde.

Q. Are you working now? A. Yes, sir.

Q. Where do you work? A. I work for myself.

Q. Where do you work? A. No. 1640 Vallejo.

Q. Where do you reside? A. No. 1640 Vallejo.

Q. You said in your direct examination a little while ago that you had never taken a drink in that place since you moved out there a year ago; isn't that your testimony? A. I did not. I have drank in there inside of a year.

Q. When did you move out? A. A year ago.

Q. When? A. I moved some time after election. What day it was I don't remember.

Q. After what election? A. After the last election.

Q. You moved on to Vallejo Street after the last election? A. Yes, sir.

Q. Then when you said about a year ago you were mistaken. You did testify in your direct examination that you have not taken a drink since you moved in there about a year ago? A. I said I went in there regularly every morning about eight o'clock, a year ago when I lived in the precinct.

Q. When did you leave there? A. I lived in that district.

Q. Where? A. No. 1720 Hyde.

Q. And you moved into this district since election day? A. Yes, sir.

Q. Who were you rooming with on the day of election? A. With my father.

Q. Where does your father live? A. No. 1640 Vallejo.

Q. At the time of the election were you rooming with your father at 1640 Vallejo? A. I was rooming at 1720 Hyde. I said I was—

Q. [Interrupting.] You did not swear a minute ago you were rooming at 1640 Vallejo Street, with your father? A. No. I was living at the time of election at 1720 Hyde; I am living at 1640 Vallejo now.

Q. Where does your father live now? A. At 1640 Vallejo. He lived at 1720 Hyde before election.

Q. How long before? A. I guess three or four years.

Q. How long before the election did he move? A. He did not move before the election, he moved afterwards.

Q. Then at the time of election he was living on Hyde Street, was he?
A. Yes, sir; and so was I.

Q. And you were living there? A. Yes, sir.

By MR. DORN: You lived with your father on Hyde Street three or four years? A. Yes, sir.

Q. Up to the date subsequent to the last election? A. Yes, sir.

Q. And then you moved with your father to live on Vallejo Street, where you are now living? A. Yes, sir.

HENRY McLOUGHLIN.

A witness on behalf of contestant, sworn, and testified as follows:

Direct Interrogatories.

MR. CLUNIE: Mr. McLoughlin, where do you reside? Answer—I resided at 37 Ninth Street up to the first of this month. I ain't stopping any place particular; that is, until to-day.

Q. You were in jail until a few days ago, were you not? A. Yes, sir.

Q. In the city prison here? A. Yes, sir.

Q. In whose company was you? Who was there with you? A. There was a man named James Murray.

Q. James Murray was there? A. Yes, sir.

Q. You and Murray were together, were you? A. Yes, sir.

Q. During the time you and Murray were there, did Murray have any visitors? A. Yes, sir.

Q. Who called on him? A. There was some of his relations.

Q. Was this gentleman there [indicating Mr. Banks, the respondent]?
A. No, sir.

Q. Was the tall gentleman there [indicating]? A. Yes, sir; the big man with a beard. He said his name was Mike Smith.

Q. Did Smith and Murray have any talk? A. They had three or four different conversations.

Q. Did you hear any of the conversations? A. A friend of mine was speaking to me. I heard the two of them conversing, and I heard Smith asking Murray if he had those letters burned up, and Murray said, "They are all right," like that.

Q. What was that? A. Smith asked Murray if he had those letters burned up which he got, and Murray said "They are all right; they are all right." Like that. That is all I heard. I was sitting on the bench.

Cross Interrogatories.

By MR. DORN: Do you know what letters he was talking about? A. No: I don't know what letters they were referring to.

Q. You don't know what they referred to? A. No; until Murray told me.

Q. Did you think it was any of your business to listen to other people's conversation? A. I couldn't help listening. No, sir; I don't think it is any of my business to listen to other people's conversation.

JAMES MURRAY.

A witness on behalf of contestant, sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Mr. Murray, where do you reside? Answer—No. 306 Filbert Street.

Q. You were confined in San Quentin at one time, were you not? A. Yes, sir.

Q. Do you know a gentleman by the name of Leale—Captain Leale? A. Yes, sir.

Q. Do you know whether or not he is related to Mr. Banks? A. Yes, sir; he is a brother-in-law, I believe.

Q. During the time you were in San Quentin did you know of the fact of W. O. Banks having been a candidate for State Senator? A. Yes, sir.

Q. From the Twenty-first Senatorial District? A. Yes, sir.

Q. How did you ascertain that fact? A. Captain Leale came up and spoke of it to me, and asked me to do what I could.

Q. Just state what occurred between you and Captain Leale.

By MR. DORN [interrupting]: Where did this occur? A. In San Quentin.

Q. Who was present? A. Captain Leale and me.

Q. Nobody else? A. No, sir.

Q. Nobody else heard the conversation? A. Not that I know of; no.

Q. Was there anybody near enough to have heard it? A. There may have been.

Q. You don't know? A. I don't know.

Q. What part of the prison did it occur in? A. Outside the wall, in the officers' kitchen.

Q. Do you remember the date? A. I believe it was on the seventeenth day of October.

Q. What fixed that date in your mind so accurately? A. Because there was a letter written out of there on the eighteenth day of October, and it was the day before the letter was written that we had the conversation, me and Captain Leale.

Q. What fixes the date of the letter in your memory? A. Because I saw the letter written, and that is what makes me know and makes me sure of it.

Q. You did not write the letter? A. I did write one, but that letter was written by another party.

Q. What fixes that letter in your memory so accurately to remember the date of it? A. Because I saw the date of it; I was sitting there at the time.

Q. And you remember seeing the date? A. Certainly.

By MR. CLUNIE: Just state the conversation between you and Captain Leale. A. Captain Leale come up to me and he asked me if I would try and do what I could for my friends to help his brother-in-law.

Q. Did he state who his brother-in-law was? A. Why, certainly; he told me his brother-in-law was W. O. Banks, running for Senator, and told me all about the facts, one thing and another, and told me I wouldn't lose nothing by it; and told me it was to my benefit to do what I could.

Q. Did he ask you if you had friends? A. He knew I had friends.

Q. Did he specify who they were? A. Certainly; he knew who my friends were.

Q. Did he ask you about any friend in particular? A. Why, certainly; he told me to write to my brothers.

Q. He told you to write to your brother? A. Certainly.

Q. Any one else? A. Not in particular. Any of my friends.

Q. He told you it would be to your benefit? A. If I would write to my brother or any of my friends.

Q. And get them to vote for Banks? A. And give them a vote for W. O. Banks.

Q. What is Captain Leale's business? A. He is Captain of the steamer running from San Francisco to San Quentin.

Q. That occurred on the seventeenth of October? A. Yes, sir.

Q. In pursuance to that did you write any letter or cause any letters to be written? A. Yes, sir.

Q. Will you look at that letter [showing]. Is that your writing? A. No, sir. That is a friend of mine.

Q. What is his name? A. A young man named August Martole.

Q. Did he write that at your request? A. Yes, sir.

Q. What caused you to request him to write it? This request of Captain Leale's? A. Yes, in favor of Captain Leale, certainly.

MR. CLUNIE: We offer this letter in evidence.

MR. DORN: We object, as incompetent and irrelevant.

[Here counsel for contestant reads the letter as follows:

SAN QUENTIN, MARIN COUNTY, October, 1888.

DEAR BROTHER: It is so long since I heard from you, or you from I, that I thought I would go you these few lines. It is only when I want a favor from you that I think of writing to you. I have a friend over here, a free man, and he has treated me very good at different times and he asked me would I try and get some of my friends in the city, and I told him I would do what I best could. Well, this fellow has a friend in the city that is running for State Senator on the Republican ticket, and his name is W. O. Banks, and if you can do the things for him I hope that you and Lewis will get what you can for him. Don't forget it—the name. Well, that is about all I have to say in regard to politics.]

MR. CLUNIE: Then it goes on, and that is all that there is about politics.

Q. You wrote that letter in pursuance of that request? A. No, sir; I did not write that letter at all. That was the letter this friend of mine wrote.

Q. You caused it to be written? A. Yes, sir.

Q. How was it sent? A. By Captain Leale.

Q. To whom was it sent? A. To my brother.

Q. It did not go through the regular channel? A. No, sir.

Q. How was it sent—by Captain Leale? A. Yes, sir.

Q. Isn't there a rule over there it should go through the prison? A. Yes, sir; but it did not this time.

Q. In this case it went through the private messenger? A. Yes, sir.

Q. Who was that letter written to? A. That letter was written to this August Martole's brother.

Q. Was it Martole or Morton? A. His right name was Martole, but his prison name was Morton.

Q. Look at that envelope [showing]. A. That is his brother's.

Q. [Reading] "Mr. George Morton, 3181 Broadway Street, San Francisco, California." It is dated as being mailed at San Francisco.

Q. Did you write a letter yourself? A. Yes, sir.

- Q. Who was that letter written to? A. Written to my brother.
- Q. Will you look at that letter [showing] and see whether that is the letter or not? A. Yes, that is the letter.
- Q. That is your own handwriting? A. That is in my own handwriting.
- Q. You wrote that letter in pursuance of Captain Leale's request? A. Yes, sir.
- Q. And sent it to your brother? A. Yes, sir.
- Q. Your brother lived where? A. No. 306 Filbert.
- Q. In the Twenty-first Senatorial District? A. Yes, sir.
- Q. Did you write any other letters? A. I did.
- Q. This man Morton was living in the district? A. Yes, sir.
- Q. He had a brother in the district? A. Yes, sir; around there.
- Q. There in that district? A. Yes, sir.
- Q. And he had a brother living in that district? A. Yes, sir.
- Q. Is that dated the first? A. Yes, sir.
- Q. It was before the election you sent this letter, was it? A. Yes, sir.
- MR. CLUNIE [reading]:

SAN QUENTIN, November 1, 1888.

MY DEAR BROTHER JOHN:

I write this letter hoping to find you and all the family well and in good health, as it needs me at present. Dear brother, I want you to do me a favor, and I also want Johnnie Carey and Charlie [somebody's name is torn off] to do me the favor, also. I suppose you will think it str of me in interesting myself in politics, and I still be a prisoner; but in my case it is for my own——.

THE WITNESS [interrupting]: For my own benefit.

MR. DORN: I suggest that the letter be read.

THE WITNESS: It is "interest."

MR. CLUNIE: It is torn off there. [Continuing reading.] You are well aware that I am in position where I come in contact with the free people all the time, so now, my dear brother, I will tell you what I want you to do for me. In the first place, I have a friend who has done many little favors for me since I have been here. And now I want you to help me, as I am looking towards the future. Captain Leale's brother-in-law is running for Senator on the Republican ticket. I want you to put in a vote for him, W. O. Banks, and I also want Johnnie Carey and Charlie to do the same, and that will be doing me a great favor.

That is all I care about. There is a lot more in the letter there.

MR. DORN: If it goes in the testimony I insist that it all go in.

By MR. CLUNIE: That letter was written also in response to these requests of Captain Leale's, was it? A. Yes, sir.

Q. What was done with that letter? A. That was given to Captain Leale, and he brought it to my house and gave it to my brother.

Q. Did that letter go through the prison? A. It was supposed to go through, but it did not go through.

Q. It did not, as a matter of fact, go through as prescribed by the regulations? A. No, sir; it did not go through.

Q. Did you ever meet Mr. Banks? A. Yes, sir; I met him.

Q. Where did you meet him? A. I met him three days after election.

Q. Where? A. In San Quentin.

Q. You did not meet him before the election? A. No, sir; I did not.

Q. Your term expired when? A. On the fourth day of December.

Q. That was not a few days after election then, as they claim? A. No, sir.

Q. It was pretty near one month after election? A. One month.

Q. Did Captain Leale report to you from time to time after he had seen your relatives? A. Yes, sir.

Q. You had frequent talks with him, did you? A. All the time; yes, sir.

Q. And he repeatedly requested you to carry this on? A. Certainly.

Q. You say he repeatedly told you when you got out they would take care of you? A. Why, certainly. He gave me all the promises in the world.

Q. Captain Leale has free access to the prison there? A. Certainly he has.

Q. He has free access to the prisoners over there? A. Yes, sir.

Q. And carried letters out? A. Not if they knew it.

Q. And does he carry them out? A. Yes, sir; at least he carried these out. I don't know what else he has done.

Q. Do you know a man named Smith? A. Yes, sir.

Q. Since you have got out of San Quentin you were rearrested? A. I was.

Q. You were confined in the City Prison? A. Yes, sir.

Q. During that time did Mr. Smith call on you? A. Yes, sir; he did.

Q. Did you and he have any talk about these letters then? A. Yes, sir.

Q. What was it? A. He asked if I had these letters burned up, and I told him they were; I told him as much as that they were burned; I told him they were all right.

Q. It was in consideration of these promises that were made, to look out for you in the future, that you wrote these letters, was it? A. Yes, sir.

Q. And it was that that influenced you in all your acts? A. Yes, sir.

Cross Interrogatories.

By MR. DORN: You say in your letter you had a friend named Captain Leale? A. Yes, sir.

Q. Did you consider Captain Leale your friend? A. I did at that time.

Q. Why? A. Why?

Q. Yes, sir. Hadn't he done a great many favors for you? A. Had he done a great many favors for me?

Q. Yes, sir? A. Well, no; no as——. [Pausing.]

Q. Hadn't he been kind to you on a great number of occasions? A. No, not any more than I had to him.

Q. Then why should you call him your friend? A. Why shouldn't he?

Q. That treats you kind? A. That treats me as I do him.

Q. And he had done favors for you? A. He may have, but I have done favors for him.

Q. And you felt that your obligations to him had been entirely discharged? A. We stood just about even.

Q. Then you did not consider these letters were friendly on your part to Captain Leale? It was simply mercenary, for hope of reward? A. No, sir. He asked me for these letters.

Q. [Interrupting.] I say it was merely mercenary on your part? A. Certainly.

Q. You were simply selling your influence for whatever it was worth? A. Certainly.

Q. And that was the only motive that actuated you? A. Certainly.

Q. You have been arrested since you got out of San Quentin? A. Certainly. I had to be over there to write those letters.

Q. How long after you were out of San Quentin were you rearrested? A. Eh?

Q. When were you discharged from the State Prison? A. On the fourth of December.

Q. When were you rearrested? A. I believe it was about the twenty-second of December.

Q. What were you confined in San Quentin Prison for? A. For burglary.

Q. For what were you rearrested? A. It was aiding a prisoner to escape from an officer; it was disturbing the peace; that was it.

MR. CLUNIE: I want to say that you can, as a matter of right, refuse to answer any question that may criminate you.

By MR. DORN: You were rearrested for disturbing the peace? A. Yes, sir.

Q. Wern't you rearrested for assault to rob? A. I refuse to answer; I decline to answer.

MR. DORN: That will not criminate him; that will not rearrest him.

A. [Continuing.] Yes, sir; I was arrested for assault to rob, and I was dismissed.

Q. Then why did you say awhile ago that it was for disturbing the peace? A. I had been arrested for disturbing the peace.

Q. You have been under arrest twice since you got out. then? A. Yes, sir

Q. Then you were arrested for assisting a prisoner to escape? A. I was arrested for disturbing the peace and for assisting a prisoner to escape; that was one charge.

Q. That is two charges? A. Well, it was at one time.

Q. You have been arrested on three charges since you got out? A. I was arrested twice.

Q. You have been arrested on three charges since you got out? A. You can call them three charges if you like.

Q. And before you were out of San Quentin you were arrested on three charges? A. Yes, sir.

Q. Who was your attorney in these cases? A. What cases have you reference to?

Q. In these criminal cases for which you were under arrest? A. I believe it was Clarence Gray.

Q. Was Clarence, then, your attorney in all three of these cases? A. Yes, sir.

Q. In all three of them? A. Yes, sir.

Q. What promises have been made to you as an inducement for your testimony here? A. No promises whatever.

Q. Haven't you been told if you testified right that these charges would not be pressed? A. No, sir.

Q. You have not? A. No, sir.

Q. Who gave bail for you? A. There was no bail given for me. I was dismissed.

Q. Are you dismissed now? A. Yes, sir.

Q. And there is no charge against you? A. There is a charge of disturbing the peace against me, but my mother went bail for that.

Q. And that is the only charge against you? A. Yes, sir.

Q. Do you know who employed Clarence Gray? A. Yes, sir: my mother did.

Q. Do you know where she got the money to employ him? A. She got it from her own people.

Q. How do you know it? A. Because I have got cousins and brothers who are working all the time, and they gave it to her.

Q. Did you see them give it to her? A. It won't require me to see that in order to know they gave it to her.

Q. How do you know they gave it to her? A. I know they work, and I know they gave her the money. I ain't there watching around to see what they give her, and what they don't give her.

[Here the witness was temporarily withdrawn, and a recess was taken until 2 o'clock P. M.]

AFTERNOON SESSION.

JAMES MURRAY.

Recalled for further Cross Interrogatories.

By MR. DORN: You said in your testimony this morning you had had a conversation with a gentleman by the name of Mike Smith while you were confined in the city prison? Answer—Yes, sir.

Q. Is this the gentleman you had that conversation with [indicating]? A. Yes, sir.

Q. How did Mr. Smith happen to go there? A. I don't know how he came, whether to see me or not, but he came in there anyway.

Q. Didn't your brother ask him to come there? A. Not that I am aware of.

Q. Didn't he say your brother had asked him to come there? A. Not that I am aware of; no.

Q. Just stop and think, now, a minute. All I want is to get the truth, and of course you can stop and consider until you remember. A. If he told me that my brothers went to see him I don't remember it.

Q. Then you don't know whether, when he came in, he said that your brother had asked him to come and see you or not? A. No, I don't remember.

Q. Did you ever leave a note anywhere for Mr. Smith to call and see you? A. I left a note for Captain Smith. I left a note for him to call and see me at my house.

Q. When was that? A. It was about three weeks ago last Monday, I believe.

Q. Was that after your arrest? A. No, sir.

Q. Before your arrest? A. Yes, sir.

Q. Before either of your arrests? A. Yes, sir.

Q. You left a note for him where? A. I believe it was in the Mint Saloon.

Q. And you asked him to come and see you at your house, did you? A. No, sir; I did not.

Q. What did you ask him? A. I asked him if he wanted to see me, he could either call or send for me.

Q. Didn't you state in your note which you left at the Mint Saloon that you wanted to see Captain Smith, and ask him to come and see you, and didn't you further state that people had been to you in the interests of Mr. Sullivan, the contestant in this case, and offered you certain inducements for the testimony in a particular direction, and stating that you wanted to see Mr. Smith relative to the matter? A. Not that I am aware of.

Q. Didn't you write that letter? A. I wrote a letter; yes, sir.

Q. Didn't you write the letter I have just narrated to you? A. Not that first; I don't believe I did.

Q. What did you say? A. I might have told him that I would like him to send word to me if he wanted to see me.

Q. Didn't you state in that letter that three different parties had been to you asking you to testify? A. No, sir; I did not.

Q. In the letter you did not say that? A. No, sir; I did not.

Q. You didn't say anything about that? A. About testifying? I don't believe that word was in it.

Q. Well, it meant you were expected to be a witness in this case? A. I didn't say anything about a witness; no, sir.

Q. What did you say in the letter? A. I never wrote a letter; but I cannot say for sure.

Q. Wait a moment. You said you did write a letter? A. I admit I did write a letter; yes, sir.

Q. You did, didn't you? A. I did; yes, sir.

Q. Now, you did write a letter? A. Yes, sir.

Q. What was in the letter? A. I could not explain. I couldn't go over the particulars of it, nohow.

Q. You couldn't explain? A. No, sir.

Q. What did you want of Smith? A. I didn't want to see him in particular; but I wanted to see him—

Q. If you didn't want to see him, why did you leave the letter for him? A. I left the letter referring to Mr. Banks, because I was promised Mr. Banks would do what he could for me, getting some work or another.

Q. Did you say anything of that kind in your letter? A. It meant the same thing.

Q. Did you say anything of that kind in your letter? A. I told him I called on Captain Leale a couple of times, and also on Mr. Banks, and didn't see either of them.

Q. Didn't you say in the letter you had been approached by people in the interest of Mr. Sullivan, to give in your testimony the contents of a letter which you had sent from San Quentin to your brothers? A. I don't think I mentioned anything about anything—

Q. [Interrupting.] Will you swear that you did not? A. As far as I know, I don't think I said anything like that.

Q. As far as you know you don't think you said anything like that? A. Yes, sir.

Q. Will you swear now, and I ask you again, that you didn't say just exactly that? A. Exactly what?

Q. Didn't you say in the letter you had been approached by people in the interest of Mr. Sullivan, to give in your testimony the contents of a letter which you had sent from San Quentin to your brothers? A. I didn't mention Mr. Sullivan's name.

Q. Did you mention this contest? A. I don't believe I mentioned anything about the contest either.

Q. Did you mention any letter—anything about a letter which you sent from San Quentin to your brother? A. I may have mentioned that.

Q. Did you or not? A. I won't swear I did or did not.

Q. Did you ask in the letter to see Mr. Smith before you were able to testify one way or the other, or didn't you say in the letter you were afraid to testify according to the promises these people had made you? A. I didn't say anything about testifying either way.

Q. Didn't you ask Mr. Smith to call at 356 Lombard Street and see you? A. I asked him if he wanted to see me.

Q. You said nothing in that letter at all then about having been approached by people asking you to testify in this case? A. I may have said there were three or four parties come to me and spoke to me, but that is about all I did say.

Q. Didn't you say in that letter three or four parties had come to you in this case and they had held out inducements to you, and you wanted to indicate that fact to Mr. Smith? A. I didn't say nothing of the sort.

Q. You swear positively to that? A. Yes, sir.

Q. And you swear as positively to that as to anything else you have testified to? A. What did I testify to?

Q. You know what you testified to. You are as positive of this as you are of anything else? A. Of what?

Q. That you didn't say anything about going on the stand. A. I swore I didn't mention anything about a witness or contest or anything else; neither of those things were in the letter I wrote.

Q. You are just as positive of not saying anything about those things as you did of any other things you had given since you were on the stand? A. I don't know what I said.

Q. You are as positive of what you now state as you are of anything else you have stated? A. Yes, sir; I am positive that I did not mention nothing about the contest, or about anything in reference to that business. I might have said in the letter that there were two or three parties come to me.

Q. You say you did say to him that two or three parties had come to you? A. I might have said that; I won't be sure.

Q. What did they come to you about? A. I didn't say what they come to me about.

Q. You said just simply two or three parties had come to you? A. Yes, sir.

Q. You didn't tell him what it was about at all? A. No, sir.

Q. You didn't say anything about what it was? A. No, sir.

Q. You are positive of that? A. I think I am.

Q. Do you swear to that positively? [Witness pauses.]

Q. Take all the time you want to. [After a pause.] Have you made up your mind yet? A. Well, as far as I can remember, that is all I mentioned; that there were three or four parties come to me. That is all; that is all I can remember of it.

Q. And you didn't say what they came to you about? A. Well, I may have—[Pausing.]

Q. As a matter of fact, was it true that three or four parties had come to you? A. I decline to answer that question.

THE COURT: Answer the question.

MR. DORN: Had they? A. What is it, again?

Q. I ask you who those parties were that had come to you? A. Who they were?

Q. Yes, sir. A. I don't see that I have to mention any names.

Q. I see that you have to mention the names.

THE COURT: Answer the question.

MR. DORN: Who were they, sir? A. Am I supposed to mention any names?

Q. Of course you are supposed to mention names.

THE COURT: Did you hear the question? A. Yes, sir.

THE COURT: Answer the question.

By MR. DORN: Who were they, sir? [A pause.] Give me their names. A. I can't remember their names.

Q. You can't remember the names? A. No, sir.

Q. Then why did you ask if you were supposed to give the names, and why did you hesitate that long before you replied? You knew the names a few moments ago? A. I didn't say any names. I said three or four parties. I thought it was not required.

Q. You did know their names? A. No, I didn't know their names.

Q. You can't tell any of them? A. I can't remember that, no.

Q. Do you mean to tell me under oath that within the last three weeks three men have approached you on this subject, and asked you to testify, and that you do not now remember their names? A. I only guess there were three parties, and I cannot tell what parties it was in particular.

Q. You look at me, and don't look at anybody else in the room. A. I am looking at you.

MR. DORN: I have seen several attempts to coach witnesses by bystanders in the room, and if it occurs again I shall certainly ask your honors to exclude the witnesses.

Q. Do you know a gentleman by the name of Collins, a Collector in the Harbor Commissioners? A. Yes, sir; I know him.

Q. You are acquainted with him? A. I know him; that is about all.

Q. Isn't he one of the men who approached you on this subject? A. No, sir; not that I know of.

Q. Have you had any conversation with Mr. Collins? A. No more than I had with anybody else.

Q. Have you seen him since you left San Quentin? A. I have seen him on several different occasions.

Q. Where did you see him? A. I might have seen him a dozen times.

Q. Where did you see him first? A. He is in the habit of going along that way when he goes to work.

Q. Where did you first have your conversation? A. The first time I saw him I think he was going down to work, passing along Filbert Street.

Q. What was your conversation with him? A. It was about one thing or another. I don't suppose that there was anything—nothing about politics.

Q. When was it you had your conversation with him about politics? A. Anything they would talk about politics I don't think it concerns this case.

Q. I think it concerns this case very materially. When was it you had your talk with him about politics? A. I might have talked—

Q. [Interrupting.] Don't tell me what you might have done, but tell me when it was. A. Oh, I ain't sure when it was.

Q. To the best of your knowledge when was it? A. It might have been about three weeks and a half ago.

Q. Where was it? A. Oh, on Telegraph Hill. I see him every day going down to work. We always talked.

Q. You are pretty friendly with him, aren't you? A. Oh, not friendly. Just so.

Q. What part of Telegraph Hill was this? A. Corner of Montgomery and Filbert.

Q. What time of day or night was it? A. It was at noon time, when he was going to lunch, and he had to come back.

Q. Who was present? A. I don't suppose there was anybody present. There might be and there might not.

Q. What did he say to you about this case? A. What case? This case going on now?

Q. Yes, sir; this case I am talking about. A. I don't remember him saying anything about this case.

Q. Your memory is a blank on that subject, is it? A. I don't remember it being a blank, but I don't remember it.

Q. If he said anything you proceeded to forget it, did you? A. I don't remember whether he did or not. I don't think so. I told you I don't remember his saying anything.

Q. Why did you say you had a conversation with him about politics? A. It was about other matters; it was about O'Donnell.

Q. You said awhile ago you had a conversation with him about this case. What was it? A. I didn't say anything of the sort. I said I had a talk with him about politics. I didn't say anything about this case.

Q. Did he ever tell you anything about this contest? A. Not as I know of.

Q. What did he ask you about your testimony in this matter? A. He didn't ask me, I don't think, about any testimony in this matter.

Q. Who else talked with you about this case? A. About what case?

Q. Don't say to me, "What case." You know what case we are talking about. A. My brothers and my cousin.

MR. DORN: I ask that this witness be required to answer the question and not to resort to any such impertinence. A. [Continuing.] My brothers and my cousins talked about the case to me.

Q. What did they say to you about it? A. They talked; they were down here on the stand day before yesterday, and one thing and another.

Q. At the time you sent that letter to Mike Smith you said in that letter three or four people had talked to you about this case, wanting you to testify. Who were those people? Collins is one of them. A. I didn't say nothing of that sort.

Q. Is Collins one of them? A. No, sir; not as I know. I don't remember him saying anything to me.

Q. He either did or did not, and I want you to tell the truth. A. To my best opinion he did not.

Q. Will you swear positively that he did not? A. I couldn't swear positively because I don't think he did.

Q. Then somebody did, but you can't remember who they are? A. I tell you there were three or four parties, but I don't remember what particular parties they are.

Q. Then so many people have talked to you about testifying in this case that you cannot say who they are? A. Yes, sir; there is so many.

Q. What inducements were offered you, then, by these people if you would testify in this case, sir? A. Testify in this case?

Q. Yes, sir; that is what I am talking about exactly. A. I don't believe there was any inducement held out to me for to testify in this case.

Q. What case was it? A. It was something about a letter. I believe, from what I understand people were talking about. I did not know of any case coming up.

Q. Somebody wanted to get possession of that letter? A. Yes, sir.

Q. Who was it wanted to get possession of that letter? A. I told you there were several parties, and I cannot remember who they were.

Q. Was Mr. Maxwell, this gentleman here [indicating], one of them? A. No, sir; he didn't ask me for the letter.

Q. Was Mr. Clunie one of the gentlemen that talked to you about the case? A. No, sir; I don't know who Mr. Clunie is.

Q. Which one of them was it that told you it would help you in your case? A. What case?

Q. In the case for which you were under arrest at that time—if you would give him that letter? A. There was none of that.

Q. Which one of them was it you told, then, that they would railroad you over to San Quentin again because of the way in which you and your brothers had acted in this matter? A. Which one of them?

Q. Yes, sir? A. I don't know of any of them told me that.

Q. You don't know whether they did or not? A. No, sir.

Q. You cannot state? A. No, sir.

Q. You don't remember? A. I don't remember.

Q. Then they might have told you that? A. I don't say they did tell me that. I don't remember anybody talking to me—any conversation of that kind. That case I was in and got arrested, I turned up and got dismissed.

Q. Weren't you told, and didn't you state to Mr. Smith, that these people approached you to get possession of that letter you had written at San Quentin? A. No; I said they might try and send me to San Quentin, but I did not mention any names, or anything else.

Q. Didn't you tell Mr. Smith they had threatened to railroad you into San Quentin again if you did not produce that letter? A. I said they might try to do something against me.

Q. That who might try and do something against you? A. I don't know who they were. I didn't say any names.

Q. Didn't you tell Mr. Smith, in the presence of Sergeant Lindheimer, the present Keeper in the City Prison, at the desk of the Sergeant, that people had approached you and asked you for that letter, and told you they intended to railroad you into San Quentin unless you produced it? Didn't you tell him they intended to do that on account of the action you and your brothers took in the last election, and unless you produced that letter? A. It was nothing of the sort.

Q. What was the conversation that took place between you and Mr. Smith in the presence of Sergeant Lindheimer in the City Prison? A. If you want me to go through with the plain facts, I will state them to you.

Q. The conversation took place just as I have said, did it? A. No, it did not.

Q. Where did it take place? A. It took place in the City Prison, but not in the form you say.

Q. Where did it take place? At the Sergeant's desk? A. It may have been a little ways from the Sergeant's desk.

Q. At the end of Sergeant Lindheimer's desk? A. I cannot say.

Q. Was the Sergeant there or not? A. I cannot say. I didn't say nothing I was scared of anybody's seeing me.

Q. You don't know whether Sergeant Lindheimer was there or not? A. I do not.

Q. In that letter, didn't you state the names of the people who had approached you? A. No, I did not.

Q. You only said that three or four people had approached you? A. Yes, sir.

Q. And that is all you did say about it, and now you don't remember the names of one of those people? A. No, sir; I do not.

Q. You don't remember whether or not they made any promises to you or any threats? A. As I told you before, I said that I told Captain Smith—I didn't say anybody told me; I said they would try and do something hard against me; I might have said something like that.

Q. That is what you said in the letter? A. No, sir; but to Captain Smith.

Q. You did say in the letter that three or four people had approached you about the letter? A. Yes, sir; I did.

Q. And had approached you to get you to testify? A. I didn't so testify; no, sir.

Q. To get the letter then; that was it? A. I don't believe I mentioned the letter; I said three or four parties approached me; I didn't say letter or testify.

Q. You did not tell what they approached you for? A. No, sir, I did not.

Q. Will you tell me now what these three or four parties approached you for? A. They might have talked to me.

Q. What did they approach you about? A. They talked about politics, and one thing and another.

Q. Just tell me what they approached you about? A. They might have said if I would turn up the letter it would be for my interest.

Q. They might have said something of that kind? A. Yes, sir.

Q. They might have said to you then, if you would turn up the letter it would be to your interest? A. It might have been that way; I don't say they did.

Q. And according to that you did turn the letter up, did you? A. No, sir.

Q. Where did the letter come from? A. You are talking about three weeks ago?

Q. That is what I am talking about? A. I didn't turn no letter up to them.

Q. I am talking about the time the people approached you, before you sent the letter to Captain Smith, and the people you referred to in your letter? A. Oh, well; I misunderstood you.

Q. Well, we will understand each other after a time. What did those people that approached you—that you told Captain Smith, in your letter, had approached you—say to you? What did they approach you about? A. They got talking about one thing and another, and they heard that I was interested in this Banks business, and they told me I done wrong, and that I ought not to have done it, and one thing and another.

Q. That was what they said? A. Yes, sir; that was about the size of it.

Q. What did they say to you about the introduction of that letter? A. I don't suppose they did much, because I don't think they knew I had the letter.

Q. You don't think they knew about it, do you? A. No, sir.

Q. Who was it approached you after your arrest, and told you you would be railroaded into San Quentin if you did not produce the letter? A. I told you I don't remember anybody telling me any such thing.

Q. You don't remember one way or another about it? A. I don't remember anybody coming up and asking a question like that. I may have just told Captain Smith.

Q. If they said that would you remember it? A. I think I would.

Q. You either guess or think all the time. A. I think I would if they said it.

Q. I don't want you to guess. I want you to tell the truth. If anybody told you that would you remember it? A. I think I would.

MR. CLUNIE: You have a right to say that. Just keep that up.

By MR. DORN: You stated in your direct examination this morning that Captain Smith called on you in the city prison in your cell. Was that the truth? A. Did I say Captain Smith called on me?

Q. Yes. A. I don't think I did. I said Captain Smith came into the city prison and was speaking to me.

Q. That is what I mean. A. Yes, sir.

Q. Didn't you state in your direct examination this morning that Captain Smith called on you in the city prison and in your cell? A. You asked me if Captain Smith came to see me and I told you I didn't know —.

Q. [Interrupting.] Just answer my question. A. He was in and I was talking to him.

Q. Well, answer my question.

By MR. CLUNIE: I submit that where a witness cannot answer yes or no to that, that he be instructed that he cannot, and not what Mr. Dorn says. [To the witness.] I tell you you can say that all the way through.

By MR. DORN: You testified in your direct examination this morning about Mr. Smith calling on you in the city prison. A. I testified this morning I was talking to Mr. Smith in the city prison.

Q. And you did not say he was in the cell? A. No, sir; I did not say he was in the cell.

Q. If you said it, it was wrong? A. Yes, sir, it was dead wrong.

Q. It was false, then? A. Yes, sir.

Q. If you stated this morning in your testimony that Captain Smith called on you in the presence of the gentleman who was on the stand? Didn't you state in your testimony this morning that you had conversation with Mr. Smith, in the presence of the other witness, McLaughlin? A. I did not testify to that. I guess you are mistaken.

Q. McLaughlin testified he overheard a conversation between you and Captain Smith. If I mistake not, you testified to the same conversation, did you not? I didn't hear Mr. Smith have no conversation with nobody, no.

Q. Did you have any conversation with Mr. Smith there? A. Yes, sir; I told you I did, and I told you that three or four times.

Q. Was it about these letters? A. Yes, sir; it was about the letters.

Q. Who were present at that conversation? A. I don't know; there might have been more, but I did not hear it.

Q. Where did it take place? A. On the bench at the city prison.

Q. Wasn't it at the end of Sergeant Lindheimer's desk? A. No, sir; it was not.

Q. How far was it from the Sergeant's desk? A. I guess the bench is about three feet—the further end of the bench—from the desk.

Q. You say, then, the conversation took place about three feet from the desk? A. From the desk, yes, sir; on the bench.

Q. At the time of the conversation, wasn't Mr. Smith leaning against the Sergeant's desk with his elbow? A. Not at that time; no, sir.

Q. You were both sitting on the bench? A. We were both sitting on the bench.

Q. And that is the time you had this conversation. Was anybody else sitting beside you? A. Yes, there was; there was McLaughlin and his sister.

Q. McLaughlin and his sister were sitting beside you? A. Yes, sir.

Q. How far were they sitting from you? A. I did not look to see; they might have been a foot, or a foot and a half.

Q. Were they in conversation, or did they stop to listen to you? A. I don't know; I didn't pay any attention.

Q. Was your face toward McLaughlin, or was your back? A. I was looking toward Captain Smith at the time.

Q. Was Captain Smith between you and McLaughlin? A. No, sir. He was standing in front of me. When I said he was sitting down, I made a mistake.

Q. You were sitting on the bench then? A. Yes, sir.

Q. Captain Smith was leaning against the Sergeant's desk? A. No, sir.

Q. He was not. He was standing in front of you? A. Yes, sir.

Q. And McLaughlin was by the side of you? A. He was at the left of me: yes, sir.

Q. Was McLaughlin or his sister near you? A. I think McLaughlin was.

Q. And you were in that position, and about three feet from Sergeant Lindheimer's desk, you had this conversation; was that it? A. Yes, about.

Q. You are not positive that that was the position, are you? A. Yes, sir; I am positive.

Q. The reason I ask you is because you have changed it once or twice. A. No, sir; I beg your pardon; I did not change it; nothing of the kind. You are talking about one time we were at the end of the desk, and I am talking about another time we were sitting on the bench.

Q. Where was the first conversation that took place? A. On the bench, I believe.

Q. That was the first one? A. Yes, sir.

Q. Who were present at that time? A. McLaughlin and his sister.

Q. Then McLaughlin, and his sister were there both times, were they? A. No, sir.

Q. Only the first time? A. Yes, sir.

Q. Then you were sitting on the bench at that time? A. Yes, sir.

Q. What position were you in and what position was Smith in? A. I was sitting down, and I think Captain Smith was standing up.

Q. I thought you said you were both sitting on the bench? A. I did, but come to think, I think Captain Smith was standing up. He may have got up afterwards.

Q. You had two conversations, did you? A. Yes, sir.

Q. Was either of the conversations where you both sat down? A. Captain Smith may have sat down awhile at the first conversation and then stood up afterwards.

Q. At this first conversation, when you first started in, Captain Smith sat on the bench about two or three feet from the Sergeant's desk, you sat next, facing him, next sat McLaughlin, and next on the bench was McLaughlin's sister? A. Yes, sir.

Q. You were engaged in conversation and they were engaged in conversation— A. [Interrupting.] I don't know whether they were engaged in conversation.

Q. Were you facing McLaughlin or Captain Smith? A. I was paying attention to Captain Smith, what he was saying.

Q. And you were facing him? A. Yes, sir.

Q. Whatever you said and whatever he said was directed in that way, was it? A. Yes, sir.

Q. What conversation took place? A. Captain Smith asked me about some letters, and he asked me if they were burned.

Q. Just give me the words, as nearly as you can? A. And I told him they were all right; that is all.

Q. That is all the conversation that took place, is it? A. That is all.

Q. Wasn't the conversation which took place between yourself and Captain Smith at the time you mention, to this effect: Didn't Captain Smith, when he came into the city prison, say to you, "I met your brother on the street, and he told me you were here." Was not that about the first thing that was said? A. He may have said that.

Q. Wasn't the next thing that he asked you, "What is the matter?" That you went on to tell him about the case, and told him that these people had threatened if you did not assist them in this they would "job" you, to use your own language? Wasn't that the next thing that was said? A. No, sir; I don't think I said anything of that kind. The first time Captain Smith came down to see me I couldn't have said anything like that. I said these people might try and do me up and do me some harm, or send me across the bay, or something of that kind.

Q. You may have told him that? A. Yes, I might have told him they might try.

Q. Didn't you tell him these people had been after you for these letters, and didn't you tell him if you did not testify in their favor they might—

A. [Interrupting.] No, sir; I did not say anything to him about the letters.

Q. And you did not say anything to him about the letters? A. No, sir.

Q. And he didn't say a word to you about them? A. Only what I said awhile ago.

Q. Then you did say something to him about the letters? A. He asked me about the letters, and I gave him the answer; yes, sir.

Q. Then why did you say to me just now you did not talk about the letters? Why don't you tell the truth, and we will get along? A. I did tell you the truth.

Q. Then when you stated a moment ago that you had no conversation about the letter, you stated a falsehood, did you? A. I didn't say I didn't have no conversation about the letters. When Captain Smith asked me about the letters, I told him, but that was about all I told him about the letters.

Q. If you stated a moment ago and the reporter's notes show that you had no conversation about the letters, you told a falsehood, did you? A. Did I say so?

Q. If you said it, it was a falsehood, was it? A. I don't say I said so.

Q. If you did say it, it was a falsehood, was it? A. I cannot give you any answer on that, because I told you straight up and down.

Q. Did you not state to Captain Smith that these people had been after you for the letters? A. No, I didn't tell Captain Smith nothing like that.

Q. You did not? A. No, sir.

Q. Are you sure of that? A. I did not say it.

Q. Do you swear positively to that? A. To what?

Q. That you did not say it? A. That I did not say?

Q. Yes. [Witness pauses.] I think you had better take time to think. A. No, I didn't say nothing to Captain Smith about any letters.

Q. Didn't Captain Smith then say to you—ask you if he had ever at any time over in San Quentin or since, made any promises to you or asked you to vote for Mr. Banks, or for or against Mr. Sullivan, and didn't you then say to him that he hadn't done anything of the kind? Did that conversation take place? A. It may have.

Q. As a matter of fact, while you were in San Quentin, did Captain Smith ever ask you to vote for or against Mr. Banks, or for or against Mr. Sullivan? A. No; he did not.

Q. You had another conversation you say. Did you not at this conversation state that in behalf of Mr. Sullivan persons had offered to go your bail and to get you out of jail if you would produce those letters? A. I didn't say anything of the sort.

Redirect Interrogatories.

By MR. CLUNIE: When you went on the stand, you told me you did not want to say anything that ever occurred between you and Captain Smith, and that you didn't want to drag him in, because he was a friend of yours. Now, I ask you to state everything that occurred between you and Captain Smith over at San Quentin. A. There was not much occurred.

Q. You were over in San Quentin when Captain Smith was there, were you not? A. Yes, sir.

Q. Mr. Banks had been nominated for Senator, hadn't he? A. Yes, sir.

Q. Did you and Captain Smith have any conversation over there about it? A. No, sir.

Q. Did you and he have any conversations over here after you got back? A. No, sir.

Q. Not here? A. Oh, no.

Q. Did you and he have any conversation over there about Mr. Banks? You need not be afraid of him, he is not going to harm you. A. I ain't afraid of nobody; but Captain Smith never said nothing to me.

Q. He never asked you over at San Quentin to vote for Mr. Banks? A. No, sir.

MR. DORN: Before another witness is called, I see Mr. Ryan is here, and I want to recall him for one further question before he goes.

MR. CLUNIE: I object to my case being interrupted.

MR. DORN: Before he signed his testimony I made the request to both of your honors and it was granted.

JUSTICE STAFFORD: It would have to be added to the testimony, I think.

MR. CLUNIE: I want it to appear that I had a witness on the stand and then Mr. Dorn interrupted that.

JUSTICE STAFFORD: It was ordered this morning that this witness should be recalled.

MR. DORN: I made the request this morning of both your honors, and you said it would be done; and to-day noon, just before adjournment, Mr. Ryan was present, and I asked your honors to let him testify then, and you said to wait until two o'clock.

JUSTICE STAFFORD: That is correct.

MR. CLUNIE: I don't want these other people to have to wait. That is all.

 GEORGE RYAN.

Recalled for further cross-interrogatories.

By MR. DORN: You stated yesterday, I believe, that at the last election there were four persons registered from your house? Answer—No, sir; I did not.

Q. Then I am mistaken? A. I stated the day before yesterday.

Q. Who were those voters? A. George Ryan, William Ryan.

Q. Those are brothers of yours, I think you stated? A. That is myself and brother. Also, Charles Dormer.

Q. Mr. Dormer has not been a witness here in Court. A. No, sir.

Q. You stated, I believe, that Mr. Barry died before the election, did you not? A. Yes, sir.

Q. And that so far as you knew his name was not voted at the last election? A. Yes, sir.

Q. That you supposed it was scratched off the register? A. No, sir. You asked me whether I knew if his name was voted or not, and of course I said his name was not voted, to my knowledge. I still say the same, not knowing whether it was voted. I was not present there.

Q. Were you not present at the polls on that day? A. Yes, sir.

Q. Did you vote? A. Yes, sir.

Q. What time in the day? A. About half-past six in the morning.

Q. How long did you remain there? A. I went right away, immediately.

Q. Did you return to the place any time during the day? A. Yes, sir; several times.

Q. What time during the day? A. I could not give you the exact time.

Q. About how many times during the day? A. I should say about five or six times during election day.

Q. You were there about five or six times during election day? A. Yes, sir.

Q. And how long would you stay each time? A. I think the longest that I stayed was ten minutes.

Q. What did you mean a moment ago by stating to me that you did not know whether he voted or not, because you were not there? A. I mean to say because I never saw him voted, or heard of him voting.

Q. Did you mean to say you could not see if you were there? A. He never voted while I was there.

Q. That is probably true, because he did not vote at all. About three o'clock you were present at the polls for a few moments, weren't you? A. I don't think I was there at three o'clock, although I couldn't say, not knowing the time. I had no watch with me, and looked at no clock.

Q. In the neighborhood of three o'clock in the afternoon you were present at the polls? A. Probably.

Q. And you came accompanied by another gentleman? A. I came accompanied by four gentlemen.

Q. One of those gentlemen voted, did he not? A. One of those gentlemen voted?

Q. Yes. A. No, sir.

Q. Neither one of them voted? A. No, sir.

Q. Neither one of the four gentlemen you came with voted? A. No, sir; they did not live in the precinct.

Q. About three o'clock in the afternoon, is it not true that you came to the polls, and with a man pretending to be Mr. Barry, who was dead, and that that man offered a vote, claiming that his name was Barry, and that upon his being challenged, you said that was Mr. Barry, and that he lived in your house, and that he voted upon your recommendation? A. No, sir.

Q. That is not true? A. That is not true.

Q. Nothing of the kind occurred? A. Nothing of the kind occurred, and the man that says so, lies.

Q. That is not true, then? A. That is not true.

Q. And you did not say while Mr. Pistolesi, this gentlemen here [indicating], was acting as Inspector; didn't you come to the polls with another man, and didn't that man offer to vote under the name of Mr. Barry, who had died in your house, and didn't you say to Mr. Pistolesi that the man was Mr. Barry, and didn't he vote under that name? A. Mr. Barry never died in my house. I never went with anybody that ever pretended voting Mr. Barry's name, because Mr. Barry, I thought, was canceled from the register, which he ought to have been, and I, nor anybody else, would try to do anything of that kind.

Q. What made you think he was canceled from the register? A. It was the Registrar's place to cancel all men that were dead.

Q. And that is why you thought it? A. It was part of his duties. I thought it was, and if his name was voted, I don't know it.

Q. It is the Registrar's fault, is it, if somebody voted his name? A. Certainly it is.

Q. Didn't you come to the polls with the man who pretended to be Mr. Barry? A. No. Before you go any further, I did not.

Q. Didn't somebody vote the name of Mr. Barry while you were present? A. No, sir.

Q. And didn't you say that was Mr. Barry? A. No, sir.

Q. You swear to that positively? A. I swear to that positively.

Q. And as positively as to anything else you have testified to? A. And as positively as to anything else I have testified to; as positive as I am sitting in this chair. I swear it more positive than anything else I have said—more positive than anything.

Q. You are more positive about that than anything else you have testified to? A. I am.

Q. Why are you so positive about that? A. Because I knew the man was dead, and I knew I was not going to get myself in trouble.

Q. You are absolutely certain about this, are you? A. Yes, sir; I am positive.

Q. If you are more positive about this than you are about anything else, then you are uncertain about this? A. No, sir; I am not. I am positive of everything else I said on this stand.

Q. How is it you are so positive of that? A. Well, the man is dead, and to ask a man to vote a man that is dead is a thing I don't think I nor anybody else would undertake to do, unless he is a criminal, and that is why I said I wouldn't undertake to do this, and didn't, and that is why I am more positive of it.

Q. If you are more positive about this than you are of anything else, then you are a little uncertain? A. No, I am not.

Q. Then you are no more positive of this than you are of anything else? A. Well, yes, I am. Of course in some things you can make right sure, but this I am positive.

Q. Can you be anything more than certain? A. Well, I am absolutely positive of this.

Q. Then you are not more positive of this than you are about any of the other of your testimony? A. Yes, I am more positive of this.

Q. Then you can't be any more positive of this than to be absolutely certain, can you? A. Well, no.

Q. Then there must be a degree less than that which applies to the rest of your testimony? A. Yes, there is a degree less; just about a degree.

Q. Then you are not absolutely certain of the rest of your testimony that you have given here? A. Yes, I am positive of the other testimony.

Q. Will you define for me the difference between this testimony and the other? A. I could define to you from now until to-morrow morning, and you would still ask the same questions.

Q. No; if you will answer the question. A. In this way: The man died, and I didn't attempt to ask anybody to vote a dead man's name, nor a living man's name.

Q. It is not a question of your asking them to vote a dead man's name. You apparently did not; all you did was going there and giving your sanction to his being the dead man? A. I don't associate with those kind of people.

Q. You say you are more certain about this than you are about anything else you have testified to? A. Yes; I am a little more.

Q. Then you are not as certain about the other part of it? A. I am certain about the other part.

Q. Then you are not certain about the last? A. Yes, I am.

Q. If you are more certain about the last, then you are not certain about the first? A. Yes, sir; of course I am.

Q. Then you are not more certain about the last? A. I swear positively everything that I said here.

Q. Do you swear more positively to that than you do to the first? A. I am more positive of that.

Q. If you are more positive of the last, then you are not as positive of the first; isn't that true? A. No; I said I am not more positive of Barry's name not being voted than I am of the balance of my statement, although I swear the balance of my statement I am positive of, as I said previously.

Q. Then you are positive as to all? A. Yes, sir; I am positive as to all.

Q. Then, when you said you were more positive of the last, you swore falsely, did you? A. No.

Q. Are you as positive that Barry's name was not voted as you are to any of the rest of your testimony? A. I am.

Q. Just about? A. I said I am as positive.

By MR. CLUNIE: You don't know whether some one in your absence came up and voted Mr. Barry's name, do you? A. Oh, no.

Q. These people are trying to make you swear that Mr. Barry's name was voted. You swear, as I understand you, Barry's name was not voted in your presence? A. Oh, no.

Q. You won't swear that Banks did not come up and vote it? A. Oh, no, I would not swear to that; that it was not voted.

By MR. DORN: Didn't this gentleman come up with Mr. Maxwell, and didn't he, in the presence of yourself and Mr. Maxwell and Mr. Pistolesi, the Inspector, vote the name of Barry? A. I never met Mr. Maxwell at that precinct on that day of election; that is, up until the polls closed. After the polls closed, of course, I met him—during the count.

Q. How long have you known this gentlemen, Mike Smith? A. I don't know. I have known him by reputation, I guess, fourteen or fifteen years.

Q. You have known him by reputation only? A. Well, I know him and see him.

Q. And is that the sum and substance of your acquaintance with him? A. Oh, no.

Q. What other acquaintance have you had with him? A. I had acquaintance with Mr. Smith politically.

Q. Of what date? A. I couldn't give you the date.

Q. How long have you known Mr. Smith politically? A. I think it is six years ago.

Q. Politically? A. Yes, sir; to the best of my knowledge, it is six years ago.

Q. Was your acquaintance a casual acquaintance or intimate? A. I was not an intimate acquaintance.

Q. Was your acquaintance with him such as you would confide to him the secrets of your business? A. No, sir.

Q. Or that he would confide to you the secrets of his business? A. He may have confided his secrets to me, but I never confided mine to him.

Q. Your acquaintance was one-sided; it was friendly on his side and it was distant on yours? A. I didn't say it was distant.

Q. Just give us how it was? A. Of course I knew Mr. Smith, and that he was a politician, and whenever Mr. Smith would talk to me about politics—anything that would go to injure me—he would never know it, and it was just the reverse on the other side. He tried to talk with me and find out matters from me, and instead of him finding from me, I found from him.

Q. You are pretty smart, then? A. I think I am as smart as Mr. Smith.

Q. Then the acquaintance was simply one of pumping on your side and talking on his? A. We were both pumping.

Q. Only you succeeded better than he did? A. I think I did.

Q. Then your relations were not friendly; they were distant? A. Oh, they were friendly.

Q. And each one was on his guard against the other? A. I don't know whether he was on his guard or not, but I was on my guard.

Q. You were on your guard against him, and probably he was not? A. Probably he was not.

WILLIAM LOVICK.

A witness on behalf of contestant, sworn, and testified as follows;

Direct Interrogatories.

By MR. CLUNIE: Where do you reside? Answer—On Gough street.

Q. On Gough street, where? A. Between Oak and Fell.

Q. How long have you lived there? A. About ten months.

Q. Did you live in this city and county on the day of election? A. I did.

Q. Where were you on the day of election? A. I was part of the time over in the Thirty-third District, and I was part of the time over in the Forty-fourth.

Q. What was you doing over in the Thirty-third District? A. Over there drinking whisky a good part of the time.

Q. You couldn't get any whisky in the Forty-fourth District? A. Yes, sir; but I thought I would go over there.

Q. Tell us what you were doing over in the Thirty-third District. A. I went over there because I am better acquainted over there than I am in the other part.

Q. What was the occasion of your going where you were better acquainted? A. I don't know the occasion. You might naturally go where you were better acquainted.

Q. Were you running acquaintances that day? A. I was not.

Q. Why did you go over there? A. I couldn't tell you why, any more than that I went down town in the evening.

Q. Didn't you have any object in going there? A. I did not.

Q. You had none at all? A. No, sir.

Q. What part of the Thirty-third District were you in? A. I was in the lower part, Union street and to Francisco.

Q. Just drinking whisky and without anything to do? A. Yes, sir.

Q. What is your business? A. Machinist.

Q. Did you go on these speers very often? A. No sir; I don't.

Q. Just a holiday? A. That is it.

Q. Where did you vote? A. I voted in the Forty-fourth District.

Q. What time? A. About seven o'clock in the morning.

Q. Then where did you go? A. Then I went home.

Q. And then where did you go? A. I went down town, and from there went over to the Beach.

Q. What part of the Beach did you strike? A. I struck the lower part of it.

Q. What precinct? A. I was in the First, Second, Third, Fifth, and Sixth.

Q. Did you talk to anybody that day about how they should vote? A. No, sir.

Q. What are your politics? A. My politics are any way I feel like voting. I am a free lance outside of national politics.

Q. And you were walking around that day as a free lance? A. I was.

Q. You knew Mr. Banks that day? A. I have seen him before.

Q. Did you never talk with him? A. I can't say that I did.

Q. You have never seen him before? A. No, I can't say that I did.

Q. You knew he was a candidate, did you? A. I did.

Q. Wasn't it in his interests that you went over there? A. No, sir.

Q. You didn't ask anybody in the Thirty-third District to vote in his interest? A. No, sir.

Q. No person at all? A. No person at all.

Q. You had seen Mr. Banks the day prior to election? A. Yes, sir.

Q. Where? A. Over in the Thirty-third District.

Q. What were you doing over there the day before election? A. I had no work that day.

Q. So you went over in the Thirty-third District? A. Yes, sir.

Q. Where did you see him? A. Filbert and Montgomery Avenue.

Q. In whose saloon? A. Winter's.

Q. Who was present? A. I couldn't tell you who was present. There were a dozen or more drinking at the bar when I was.

Q. You were drinking with Mr. Banks? A. Yes, sir; drinking with anybody and everybody.

Q. Did Mr. Banks ask you to drink? A. I couldn't say positively whether he paid for it or not.

Q. You knew it was somebody? A. Yes, sir.

Q. Mr. Banks was in the room? A. Mr. Banks was in the room.

Q. Did you and Mr. Banks have a talk then? A. No, sir.

Q. Did he not say a word to you? A. He might have said he was a candidate.

Q. What were you doing in that saloon there? A. As I drop in any saloon: I went because I am acquainted around there.

Q. Did you and Mr. Banks talk about his being a candidate? A. No, sir.

Q. Did he say he was a candidate? A. He did not.

Q. Did he ask you to peddle tickets for him? A. No, sir.

Q. Did he tell you you did not live in the district? A. No, sir; a party spoke of it at the time.

Q. Who did? A. I don't know.

Q. Did each man up and say it? A. No, sir.

Q. What was the occasion of it? A. I don't know.

Q. Did somebody happen to be in that saloon and treat, and somebody jump up and say, "He don't live in the district?" A. Yes.

Q. You are sure that it was said that Lovick did not live in the district? A. Yes, sir; but there were a dozen or more around the bar.

Q. Did you have any Republican tickets in your pocket on the day of election? A. Neither a Republican nor a Democratic ticket in my possession all day; only the one I voted.

Q. Did you see Mr. Banks on the day of election? A. I did.

Q. Where? A. Over on Filbert Street.

Q. What precinct? A. I can't tell you whether it was the Fifth or Sixth.

Q. You saw him at Filbert and what street? A. Filbert and Montgomery Avenue.

Q. How long had you lived in that district before you moved over on to Hayes Street? A. About eighteen years.

Q. You are somewhat of a politician? A. No, sir.

Q. And you don't take any interest in politics? A. No, sir.

Q. And you cannot tell what precinct you were in? A. No, sir; not that day; because it is divided up.

Q. When was it divided up? A. Two or three years ago.

Q. And you cannot tell what precinct it was? A. No, sir.

Q. Don't you know you said it was the Fifth? A. It may have been the Fourth; I don't, I won't say.

Q. Just where? A. Just below the corner of Filbert on Montgomery Avenue.

Q. Where did you see him on that day, in a saloon? A. No, sir; I saw him on the street.

Q. He was on the street? A. Yes, sir.

Q. And you were on the street? A. I was on the street, too.

Q. He was in a buggy? A. No, sir.

Q. He was just walking along? A. Yes, sir.

Q. The polls were right there, were they? A. Near there; about two or three hundred feet.

Q. And that was where? A. Filbert, near Montgomery Avenue.

Q. Who else was there with you? A. I think I was talking to Magner and to George Kimball.

Q. Do you know Mr. Magner? A. Yes, sir.

Q. He was present at the time you saw Mr. Banks? A. I just left him when I saw Banks.

Q. You and Banks had a little talk? A. Not much; no.

Q. What did you state to him, and what did he state to you? A. I could not state. It don't amount to anything.

Q. Did Mr. Banks give you forty dollars at that time? A. No, sir.

Q. Did he give you twenty dollars? A. Yes, sir.

Q. He gave you twenty dollars at that time? A. Yes, sir.

Q. What did he give you that twenty dollars for? A. There was no arrangement made, and I did just as I felt like.

Q. You just happened to meet Mr. Banks on the street, and he knew you were not a voter in the district at all? A. I don't know whether he knew it or not.

Q. Didn't you swear a moment ago that he knew you were not a voter? A. I did not, sir; that he knew. I said it was spoken of in the saloon.

Q. Didn't you swear he was in the saloon, and somebody said that you were not a voter? A. Yes, sir; but there might have been a great many things said.

Q. It was said in a loud voice, was it not? A. Yes, sir.

Q. And he must have heard it? A. He might have and might not.

Q. And you swear you met Mr. Banks on the street, in one of the precincts of the Thirty-third District? A. Yes, sir.

Q. And you said what? A. Just passed the time of day.

Q. Mr. Banks gave you twenty dollars? A. Yes, sir.

Q. And you don't know what he gave you it for? A. We had no understanding at all.

Q. What did he say? A. He didn't say anything; he passed the time of day and passed me the twenty dollar piece and I put it in my pocket and walked off.

Q. Were you a free lance around on that day, too? A. Yes, sir; I was.

Q. And you took the twenty dollars and put it in your pocket? A. Yes, sir.

Q. What did you do with it? A. I spent it.

Q. What for? A. I couldn't tell you all that now that I did spend it for.

Q. Did you use it to help Mr. Banks? A. I did not use it for anybody, I helped some of the lads to get their skins full.

Q. Mr. Banks did not say "Get out and help me with this?" A. He did not.

Q. Didn't you come to Mr. Magner, right after Mr. Banks had given you that twenty dollars, and say that this money had been given to you by Banks to get out and help him? A. No, sir. I told Mr. Magner I got this twenty dollar piece from Banks.

Q. And then didn't you tell him that Banks had given you that twenty dollars to help him with? A. No, sir.

Q. You swear that positive? A. I swear that positive.

Q. What did you say? A. I said I got twenty dollars from Mr. Banks.

Q. And you swear Mr. Banks did not tell you what to do with that twenty dollars? A. Yes, sir.

Q. And you wanted those people to believe it? A. I don't care whether they did or not.

Cross Interrogatories.

By MR. DORN: This Magner you had the talk with was a Democrat, was he not? A. Yes, sir; and so am I a Democrat.

Q. And you knew Mr. Magner when you stated to him that you got twenty dollars from Mr. Banks, was not a friend of Banks? A. I did; yes, sir.

Q. You didn't get this money for the purpose of buying any votes, did you? A. I did not.

Q. It was not the understanding between you and Mr. Banks that it should be used? A. We had no understanding.

Q. You simply asked Mr. Banks for the twenty dollars, and he gave it to you?

MR. CLUNIE: I submit he did not say that.

By MR. DORN: Did you just ask Mr. Banks for twenty dollars, and he turned and passed it over to you? A. A kind of a strike.

Q. Did you use that money for the purpose of influencing anybody's vote, one way or the other, in the Senatorial election? A. I did not.

Q. Was it given to you with the idea that you should so use it? A. I don't know what idea it was given to me with. It was there, and I got it. I didn't ask anybody to vote one way or the other.

Q. During the entire day you did not ask anybody to vote one way or the other? A. No, I did not.

Redirect Interrogatories.

By MR. CLUNIE: You swore a moment ago when I asked you, that there was no conversation passed between you and Mr. Banks at all, that you simply passed the time of day and he handed you twenty dollars. Now, after Mr. Dorn has prompted you, you say you asked him for it and he handed it to you. A. I don't know how it was, but I reached my hand out and the twenty dollars was there.

Q. You just came up and passed the time of day with Mr. Banks, and you reached your hand out and there was the twenty dollars? A. Yes, sir.

Q. If you did tell Mr. Magner Mr. Banks gave this money to you to help him, it is not true? A. I didn't say he gave it to me to help him; I said I got twenty dollars from Mr. Banks.

Q. You were subpoenaed to come yesterday, weren't you? A. Yes, sir.

Q. Why didn't you come? A. Because I couldn't come very well.

Q. A subpoena was served upon you? A. Yes, sir.

Q. Why didn't you come? A. I didn't think it was necessary for me to be there.

Q. When was the last time you saw Mr. Banks? A. This is the last time I saw him.

Q. When before this? A. I saw him on election day about two or three o'clock in the afternoon.

Q. Did you see him yesterday? A. No, sir.

Q. Did you see him this morning? A. No, sir.

Q. You didn't inform him yesterday you had been subpoenaed? A. No, sir.

Q. You didn't inform anybody else? A. No, sir.

By MR. DORN: Yesterday when this subpoena was served on you, were you paid your fee for attendance here? A. I was not.

Q. Then that was your reason for staying away? A. No. I tell you I would have come, only the job broke down and I quit work.

 LUKE KING.

A witness on behalf of contestant, sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Mr. King, where do you reside? A. No. 316 Chestnut.

Q. How long have you lived there? A. Since August tenth.

Q. Last year? A. Yes, sir.

Q. Did you live there at the time of last election? A. Yes, sir.

Q. Did you vote from there? A. Yes, sir.

Q. What precinct is that? A. The Second of the Thirty-fourth.

Q. Did you vote from that precinct? A. Yes, sir.

Q. Who did you vote for for State Senator. A. Mr. Banks.

Q. How did you come to vote for Mr. Banks? A. I was asked to do it as a favor. Standing at Montgomery and Filbert one night, I was approached by a young man named Charles Murray, and he said, would I do him a favor. And I said, what was it? And he said, "By voting for Banks." And I said, I would vote for him to do him the favor.

Q. Did he tell you it would be in the interest of his brother, who was in jail? A. Yes, sir; he said it would help his brother.

Q. That was the reason you did it? A. Yes, sir.

Q. And that was the reason you did it. A. It was through his influence.

Q. And that induced you to it? A. I didn't have to.

Q. At the request of Murray you did do it? A. Yes, sir.

Q. And it was for that reason you did it? A. Yes, sir.

Cross Interrogatories.

By MR. DORN: What are your politics? A. Democratic.

Q. Did you vote the State ticket, except for Senator? A. No, not when I voted for Banks.

Q. Did you vote a straight ticket, except for Banks? A. No.

Q. How many names did you scratch on your ticket? A. Two or three.

Q. Who requested you to scratch them? A. Because I have friends, and I did the favor for them.

Q. For different friends you scratched different names on your ticket? A. Yes, sir.

Q. What other names did you scratch? A. I decline to answer that.

MR. DORN: I ask that he be instructed to answer.

JUSTICE STAFFORD: We cannot instruct him to answer.

THE WITNESS: I decline to answer that.

MR. DORN: Do your honors decline to instruct the witness to answer that?

JUSTICE STAFFORD: Yes, sir.

MR. DORN: We except.

Q. Do you know Mr. Banks? A. I know him now.

Q. Did you know him at election time? A. No.

Q. You had never seen him? A. Yes; I saw him up the street, there.

Q. You did not know him to speak to? A. No, sir.

Q. You say you did scratch some other names on your ticket? A. Yes, sir.

Q. How many? A. I told you, about two or three.

Q. You did have friends, yourself? A. Yes, sir.

Q. Did you scratch Mr. Sullivan's name? A. Didn't I scratch it when I put Mr. Banks' name down?

Q. I say, did you scratch Sullivan's name? A. Of course I scratched his name.

Q. Then you scratched Mr. Sullivan's name for Senator? A. I scratched Mr. Sullivan's name for Mr. Banks' name:

Q. Did you write Mr. Banks' name on? A. I guess I did.

Q. Did you write Mr. Banks' name down? A. I did.

Q. Can you write? A. No; I don't know if I can.

Q. Then how did you write Banks' name on there, if you cannot write?

MR. CLUNIE: He did not say that; he said it was written on there by himself or somebody else.

A. You asked me if I could write?

Q. Yes, sir. A. That is a funny question.

Q. Can you write? A. Yes; I can write.

Q. Did you write Bank's name on that ticket? A. Yes, sir; I did.

Q. What part of the ticket did you write it? A. Opposite Mr. Sullivan's.

Q. Which Sullivan? Judge Sullivan or the candidate for Senator, do you know? A. The man that run against Mr. Banks.

Q. Do you know? A. Yes, sir.

Q. Do you swear that you scratched the name of Sullivan and wrote Banks? A. Yes, sir.

Q. Was it opposite Judge Sullivan's name or opposite the name of the Sullivan running for Senator? Do you swear positively which it was? A. I scratched for the man that ran for Senator.

Q. Will you swear which it was? A. All I know is, I scratched his name—Sullivan's. There were two Sullivans on the ticket.

Q. You did not scratch both? A. One was for Supreme Judge, I suppose.

Q. Did you scratch both Sullivans? A. No, I did not.

Q. Which one did you scratch? A. The one that ran for Senator.

Q. Did you scratch with a lead pencil or with a pen? A. I scratched with a pen and ink.

Q. When and what time of the day? A. In the daytime, I guess.

Q. Was it election day? A. Yes, it was election day.

Q. Will you write the name of W. O. Banks on there? [Witness does so.]

Q. Is that the way you wrote it on that ticket? A. I guess it was.

JOHN DONOVAN.

A witness on behalf of contestant, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: What is your name? Answer—John Donovan.

Q. Where do you live? A. No. 1253 Montgomery Street.

Q. How long have you lived there? A. About nineteen years.

Q. Did you live there at the time of the election held in November of last year? A. Yes, sir.

Q. What precinct is that in? A. The Thirty-Third Assembly District.

Q. In what precinct, do you know? A. The First.

Q. You voted in that precinct, did you? A. Yes, sir.

Q. Who did you vote for for State Senator? A. Mr. Banks.

Q. How did you come to vote for Mr. Banks? A. On the night before election, Charles Murray came to me and asked me would I do him a favor. I asked him what favor was it. He said to vote for this Banks; he said it would help his brother out that was in San Quentin. I told him I would.

Q. Was that the reason you voted for Mr. Banks? A. Yes, sir.

Q. And it was at the request of Charles Murray? A. Yes, sir.

Cross Interrogatories.

By MR. DORN: Do you know Mr. Banks? A.—No, sir. I saw him election day, but I don't know him to talk to.

Q. Who wrote your ballot for you? A. I wrote it myself.

Q. Who subpoenaed you to come here? A. I heard about the contest, and I thought I would take a walk up here.

Q. Have you been subpoenaed at all? A. No, sir.

Q. Who did you tell how you voted? A. I didn't tell no one.

Q. Nobody knew until you got on the stand how you voted? A. No, sir.

Q. And Mr. Clunie never asked you that question? A. No, sir.

Q. You have never told a living soul, from the day of election until now, how you voted? A. I told him I voted for Mr. Banks; that was the only man.

Q. Who did you tell that? A. This gentleman here [indicating].

Q. This gentleman here [indicating]? A. Yes, sir.

Q. How did he know it? A. I told Murray I voted for Banks.

Q. Did you ever tell Murray you voted for Banks? A. Yes, sir; I told Charles Murray.

Q. And then you told this gentleman here [indicating]? A. Yes, sir.

Q. I thought you said you never told anybody? A. I told Charles Murray; that is all.

Q. When you swore a while ago that you never told anybody, you swore to a lie did you? A. No, I didn't swear to a lie.

Q. Which one is the truth? [A pause] How much money were you told you would get for giving that testimony? A. I didn't get any money at all.

Q. How much money are you going to get? A. I don't get nothing.

Q. What was promised you? A. Nothing. Just to state that I did the favor for Charles Murray.

Q. You are just testifying now as a favor to Charles Murray? A. Yes, sir.

Q. How did you think it was going to be a favor to Charles Murray?

A. To be a favor for his brother.

MR. CLUNIE: He is not talking about how you were voting, but if you were offered any money to come here and testify. A. No, sir; I was not.

By MR. DORN: What is your business? A. Boatman.

Q. What are you doing here? You are not running a boat here in the City Hall? A. I just thought I would take a walk up here.

Q. How often do you take these walks? A. Once in a while.

Q. How long before since you were in this City Hall? A. This is about the first time I have ever been here.

Q. And you concluded to take a walk up here? A. No. I usually take a walk around.

Q. And your walk landed you in the City Hall, for the first time in your life? A. Yes, sir.

Q. How did you happen to come here to-day? You had some reason, and somebody told you to come here? A. There was no one told me to come here.

Q. Then how did you happen to come? A. I told you I heard about the contest and I thought I would come.

Q. Where did you hear of it? A. I read it in last night's "Report."

Q. Nobody told you about it? A. Charles Murray.

Q. When you said a while ago you never told anybody, you told a falsehood, did you? A. Falsehood? No.

Q. Was that the truth? A. I told Charles Murray that I voted for Banks.

Q. Is it true you never told anybody? A. Yes, sir.

Q. Then it is a falsehood when you say you told Charles Murray? One or the other of them is bound to be untrue. A. I said I told Charles Murray I voted for Banks.

Q. Then when you said a while ago you hadn't told anybody, you said what was not true, did you? [A pause.]

MR. DORN: That is all.

GEORGE F. MAXWELL.

A witness on behalf of contestant, was duly sworn, and testified as follows :

Direct Interrogatories.

By MR. CLUNIE : What is your business? Answer.—I am clerk of the Board of Fire Commissioners.

Q. Where do you reside? A. No. 1911 Stockton Street.

Q. How long have you resided there? A. About twenty-one years.

Q. Do you know a man by the name of Mike Smith? A. Yes, sir.

Q. Captain Mike Smith? A. Yes, sir.

Q. How long have you known him? A. I guess I have known Captain Mike Smith for the last ten years.

Q. Do you know what official position he has occupied in that time? A. I don't know all of the positions he has occupied.

Q. Do you know of his having occupied a position at San Quentin during that time? A. I heard he did.

Q. What position did he occupy there? A. That I couldn't tell you.

Q. Was it Captain of the Guard? A. I couldn't say whether it was Captain of the Guard or what it was.

Q. Have you had any conversation with Captain Smith since the election in relation to the contest, or in relation to the election of W. O. Banks as State Senator from the Twenty-first Senatorial District, and what was it brought it out? A. The only conversation I recollect ever having, and that I ever told anybody about, was a conversation on—I think it was the eighth.

Q. The eighth of what? A. The eighth of November; two days after election. I believe, about eight o'clock, we were all in the Fourth Precinct of the Thirty-fourth, talking about election, and it looked then like a victory for Mr. Banks, and we had virtually given up the fight then for Mr. Sullivan, and we got talking about the battle, and Mr. Smith and I got to talking about things, and about this fight, and he told me he thought he had got the best of us on one or two occasions, and that was that we had neglected some of the convicts over at the prison.

By MR. DORN : Who was present at that conversation? A. There was a whole saloonful of people.

Q. Name some of them. A. Mr. Ryan was very close to me and Mr. Smith.

Q. Who else? A. And Mr. Banks there. They were conversing at the end of the billiard table, and Mr. Smith and I were to one side.

Q. And Mr. Banks was present too? A. They were all present.

Q. Was Mr. Sullivan there? A. I don't recollect now whether he was in the room or not. He had been there.

Q. Weren't you all drinking with Mr. Sullivan at the time this conversation took place? A. I don't recollect that portion, whether we were. We all took drinks with Banks, with Smith, and with Mr. Sullivan, and with several parties.

By MR. CLUNIE : Just go on and tell the conversation that occurred, what he told you about these convicts. A. About the convicts, he told me in a general conversation that there was some twenty-seven people, I think, in the penitentiary that had friends and relatives in that Senatorial District, and that they were quite a factor in that fight, and that they had

sent letters to their friends and relatives in that district, and that they had helped Banks considerably in his fight.

Q. Did he state who requested those convicts to send letters? A. No, sir.

Q. Didn't he say he had requested them to send them? A. I don't recollect his saying that.

Cross Interrogatories.

By MR. DORN: What, if any, steps did you take toward attempting to get a pardon for this same James Murray we have been talking about?

A. I tried to assist him to get a pardon.

Q. When was that? A. Some four or five, or three or four months prior to election.

Q. Why did you do that? A. Because I knew his brothers, and his mother came and asked me if I couldn't assist her.

Q. You were a pretty active member of the Confidence Club over there which was organized, among other things, for the special purpose of electing Mr. Sullivan State Senator? A. The Confidence Club, as near as I can understand, was for the whole Democratic ticket, from top to bottom.

Q. You were located over in the Twenty-first Senatorial District, weren't you? A. Yes, sir.

Q. And you made a strenuous effort for the election of Sullivan? A. Not any more than any other Democratic candidate.

Q. Do you mean to tell me that right in his own district and in his own doorway you made no more fight for him than you did for any of the other part of the ticket? A. I personally did not, myself.

Q. Do you know that the club did not? A. I don't speak of the club.

Q. You are a member of the club, aren't you? A. Yes, sir.

Q. You were present at the meetings, weren't you? A. Yes, sir.

Q. And you heard matters discussed? A. Yes, sir.

Q. And you say now you made no more fight for Sullivan than for any other candidate on the ticket? A. They said they wanted to see Sullivan elected, and they would do anything in their power to elect him.

Q. Did you make any special fight for Sullivan? A. Not at all.

Q. You were for the whole Democratic ticket? A. I was for the ticket.

Q. And you never went out of your way in your efforts for Sullivan; you had got the entire Democratic ticket? A. No; I was for Sullivan and for the ticket.

Q. You were for the Sullivan first, and for the ticket second? A. No, sir; I was for the ticket first, and for Sullivan second.

Q. How long have you been employed in your present position in the Fire Department? A. Since the first of the month.

Q. Do you mean the first of January? A. Yes, sir.

Q. This last three or four days? A. Yes, sir.

Q. What were you employed at before that? A. I was Clerk in the Corporation Yard.

Q. You have been in the Fire Department right along before that for some time? A. I had.

Q. And on election day what was your special duty in the Fire Department? To help carry the election over in the Twenty-first Senatorial District, was it not? A. The Fire Department takes no hand in politics that I know of. I never was instructed—

Q. [Interrupting.] I don't ask you what you were instructed. I ask you if the Fire Department didn't take an active hand in the last election?

A. As to the Department, I don't know what it did; but I know that I as a member took an active part.

Q. Don't you know that a number of the other members of the Fire Department did take an active part; and wasn't your present position a reward for your services in the last election? A. No, sir; I don't know it.

Q. Don't you know that instead of having your present position you would have been fired out of your then position if you hadn't done what you did? A. No, sir; I don't know that.

Q. Do you know a gentleman by the name of Pete Fleming? A. Fleming? I do, yes.

Q. Do you know what his position is in the Fire Department? A. He is foreman of No. 2 Truck, I believe.

Q. Do you know what his position is in the same Department? A. No, sir; I do not.

Q. You don't know anything about it? A. No, sir; I am not running all the Departments in town. The Fire Department is all I am connected with.

Q. Are you acquainted with Mr. Fleming? A. Yes, sir.

Q. Does Fleming belong to the Confidence Club? A. He does.

Q. He keeps a saloon called the Iroquois Saloon, does he not? A. He and another gentleman did.

Q. Who is his partner in that saloon? A. Ryan is his partner, I understand.

Q. Do you know? A. That is what I heard.

Q. That is, the previous witness? A. I don't know.

Q. Do you know George Ryan? A. Yes, sir; I do.

Q. Do you know whether Fleming does any work here in the City Hall? A. No, sir; I couldn't swear that he does.

Q. Do you know who is the janitor of this room you are sitting in now? A. No, sir.

Q. Don't you know it is Mr. Fleming? A. No, sir; I do not.

Q. Where do you reside? A. No. 1911 Stockton Street.

Q. How long have you resided there? A. About twenty-one years.

Q. At the last election, how many men registered from your house? A. Four or five.

Q. You registered yourself? A. Yes, sir.

Q. What is your full name? A. Geo. F. Maxwell.

Q. Who else? A. I have got two brothers there.

Q. What are their names? A. William and Thomas.

Q. Were they both registered from there? A. I believe so.

Q. Do you know? A. Yes, sir.

Q. Who else? A. My father-in-law.

Q. What is his name? A. Jesse Podd.

Q. Who else? A. Two roomers.

Q. What are their names? A. That I couldn't tell you.

Q. Does Mr. Geo. W. Amos live in that house? A. Yes, sir; I believe that is it.

Q. He is one of the two, is he? A. Yes, sir.

Q. Does a man by the name of Herbert L. Warren live in that house? A. Yes, sir; I know his name is Warren. I don't know what his first name is.

Q. In what business is your brother, William Maxwell, engaged. A. He is out in the Tax office.

Q. How long has he lived in that house? A. About the same length of time I have.

Q. Are you the proprietor of that house? A. In conjunction with my two brothers, I am.

Q. Who owns the place? A. My mother.

Q. Where is your brother, Thomas Maxwell, employed? A. At the seawall.

Q. You are all three employed in Democratic offices at the time? A. No, sir; we are not anything of the kind.

Q. You are all employed in public offices? A. No, sir; we are not.

Q. You are, are you not? A. I am; yes, sir.

Q. And your brother William Maxwell is, is he not? A. Yes, sir.

Q. Your brother Thomas, where is he employed? A. He is employed in a grain warehouse by Thos. A. Gove.

Q. That is not a political position? A. No, sir.

Q. In what business is your father-in-law, Mr. Podd, engaged? A. He is working on a dredger on the seawall.

Q. Then he occupies a political position? A. Yes, sir.

Q. In what position is Mr. George Amos? A. I don't know in what position he is.

Q. Isn't he in the Fire Department? A. Not that I know of.

Q. Wasn't he a member of the Fire Department at the time of the last election? A. Not to my knowledge; he is not a regular member; he might have been a substitute, for what I know.

Q. Didn't he come from the same particular engine house that you did? A. The same particular engine house that I did?

Q. When did Mr. Amos come to your house first? A. I guess two or three months prior to election.

Q. Did he pay you his rent? A. No, sir; he did not.

Q. Who did he pay it to? A. He paid it to my wife.

Q. And you don't know? A. No, sir; I don't keep any track of it.

Q. Was it one month before election that he came there? A. No, it was more than that?

Q. Was it six weeks? A. That I couldn't tell you. It was two months and maybe two months and a half.

Q. It may be two months and may be six weeks. When did Warren first come to the house? A. The same time.

Q. They came in together, did they? A. Yes, sir.

Q. When did they leave the house? A. Warren comes and rooms there now when he is ashore.

Q. How long ago has he roomed there last? A. That I couldn't tell you.

Q. As a matter of fact, when did Mr. Amos leave the house? A. About twelve or fifteen days after election, I guess.

Q. They left within twelve or fifteen days after election. As a matter of fact, did they ever sleep in the house after election? A. I am not keeping any cases on when they slept in the house.

Q. I ask you to tell the truth. Did they sleep in the house after election? A. I couldn't tell you.

Q. You don't know what business Amos is engaged in? A. No, sir.

Q. And you don't know what business Warren is engaged in? A. Warren is on one of the revenue cutters, I believe. So he told my wife.

Q. And they came to your house two months or six weeks before election, and you cannot tell whether they slept there afterwards? A. No, sir; I could not tell positively if they slept there before, because I never saw them in bed.

Q. Do you know that they ever did sleep in the house? A. They paid their room rent there and came there.

Q. And that is all you know about it? A. That is all I know about it.

Q. Didn't Mr. Fleming bring those men there? A. No, sir.

Q. He did not? A. No, sir.

Q. Before you changed positions, what were you doing? A. I was Clerk of the Corporation Yard then.

Q. What was your duty there while you were Clerk there? A. I was Clerk of the Yard, kept accounts of the stock at the yard, and storekeeper in general.

Q. What hours were you expected to be there? A. From nine until five.

Q. On election day what hours did you keep there? A. Election day is a holiday.

Q. You don't work on holidays? A. No, I do not.

Q. After election day, on Wednesday, what hours did you keep? A. I don't think I was there on Wednesday.

Q. On Thursday were you there? A. No, sir.

Q. On Friday were you there? A. No, sir.

Q. On Saturday were you there? A. I couldn't tell you that.

Q. On Sunday, of course you were not there? A. No.

Q. On the following Monday were you there? A. On the following Monday, I think I was there. I was there as soon as the count was over.

Q. Then for the remaining portion of the week you devoted yourself to politics? A. Yes, sir.

Q. Was there any reduction of your salary on that account? A. You will have to refer to the records.

Q. I just refer to you. Did you get your salary for that time? A. Of course I got it.

Q. When you drew your salary you were required to make an affidavit, were you not? A. No, sir.

Q. Not at all? A. No, sir.

Q. You were not required to make an affidavit that you had served during the time? A. No, sir.

Q. You got it without? A. Yes, sir. I am a regularly appointed member of the Department.

Q. What was your business on election day; what were you doing? A. I was Captain of the Third Precinct of the Thirty-third District.

Q. Is that the precinct that is called the Italian quarter, up there? A. There are a good many Italians live up there.

Q. Who stationed you there? A. The Democratic County Committeeman of the district.

Q. Well, a Democratic County Committee did not. A. Well, a County Committee.

Q. Who was the man? A. I don't recollect that man's name, in the First Precinct.

Q. The two Democratic County Committeemen stationed you up there, as you call it, as Captain? A. Captain of the precinct.

Q. What were your duties up there? A. To see that everything runs right for our party, and to put people to work peddling tickets, and one thing and another.

Q. How much money did you require up there that day? A. I don't know; I required a great deal more than I had.

Q. How much money did you spend in that precinct; how much money did you give out on that day? A. I could not tell you.

Q. How much? \$1,000? A. Less than \$100.

Q. How much less than \$100? A. I couldn't tell you.

Q. Wasn't it about \$100? A. No; well, it was somewhere in that neighborhood. I had \$30 that belonged to the precinct, and then I spent some of my own money.

Q. You spent some of your own money, but you don't know how much? A. No, sir.

Q. As a matter of fact, wasn't it a good deal more than \$100? A. No, sir: I just told you it was \$100.

Q. Exactly? A. Yes, sir—well, in the neighborhood of \$100.

Q. Haven't you stated since election, and named sums a good deal larger than \$100 that you spent on election day? A. Not to my knowledge.

Q. Haven't you so stated? A. I stated not to my knowledge.

Q. If you so stated, it is not true, is it? A. I don't think I ever did so state.

Q. If you did so state, you told the truth, did you? A. I generally tell the truth.

Q. But if you made such a statement as that, you then told the truth, did you? A. Yes, sir.

Q. If you said that you spent over \$500 in that precinct on election day, you told the truth, did you? A. Anybody that states that tells a lie.

Q. If you did so state it, it would be the truth? A. If I did so state it, it would be the truth.

Q. Will you tell us what you did with that \$500? A. I said that if I had said that, it would be the truth.

Q. You said you told the truth? A. Yes; but you have not proved that I said that.

Q. How many men did you employ on election day? A. Eight or ten, I suppose.

Q. What wages did you pay them? A. Different wages.

Q. Give it to us. A. All the way from \$5; some \$2 50; some \$7 50 and some \$4.

Q. How many men did you pay \$7 50 to? A. I didn't keep any list.

Q. About how many? A. I couldn't tell you. I hired people in both precincts.

Q. Was it five, or one, or what? About how many? A. Maybe one.

Q. How many did you pay five or six dollars to? A. I couldn't tell you.

Q. Was it as many as three? A. I couldn't tell you.

Q. Was it less than five? A. I don't recollect—to the best of my recollection.

Q. About how many did you pay \$4 to? A. That I couldn't tell.

Q. About how many did you pay \$2 50 to? A. I couldn't tell you that either.

Q. Were they in the neighborhood of ten? A. I couldn't tell. I didn't keep any list of them.

Q. You only know you gave out about \$100 and you did not keep any list, but you gave to anybody? A. I gave it to whoever I thought was good.

Q. You did not spend any of that money in behalf of any of the Republican candidates, did you? A. No, sir.

Q. How long have you known John J. Sullivan, late candidate for Senator of the Twenty-first Senatorial District? A. I guess about seven or eight years.

Q. And you are pretty friendly with him, are you not? A. Yes, sir.

Q. In fact you are an intimate friend of his? A. Yes, sir.

Q. One of your special desires in this late fight and election was his election as Senator? A. Nothing more than any other candidate on the ticket. Of course I would like to see Mr. Sullivan elected.

Q. Didn't you do all in your power two years ago for his election to the Assembly? A. Yes, sir.

Q. Didn't you do all you could, and wasn't it your special duty to do all you could for him? A. No, sir.

Q. And wasn't it your special duty to do all in your power? A. No, sir. I told you I was for the ticket, and I did all I could for it, and Mr. Sullivan was on it, and therefore I did all I could for him.

Q. It was your special business in the election two years ago? A. I don't know anything about it two years ago.

MR. DORN: I ask your honors to instruct the witness to answer the question.

THE COURT: The witness says he don't recollect.

By MR. DORN: Do you state you don't recollect how much? A. That is what I said.

Q. Was it \$100? A. I told you I didn't recollect.

Q. Was it more than \$1? A. I told you I didn't recollect.

Q. You spent some money? A. Yes, sir; I spent some money.

Q. You don't recollect how much? A. No, sir.

Q. And that money was furnished you by Mr. Sullivan, was it? A. No, sir; I never got a dollar in my life from Mr. Sullivan.

Q. You never drank with him? A. Oh, yes, sir.

Q. During the last campaign, did you? A. Yes, sir.

Q. But you say you were on friendly terms, and were in the habit of talking with him, and drinking occasionally with him during the last campaign? A. Yes, sir.

Q. And he was an intimate friend of yours? A. That is what he was.

Q. And yet you took no special interest in him? A. Any more than I had for the others.

Q. And you had been intimate neighbors? A. No, sir; we were never neighbors in our lives.

Q. How far did you live from him? A. I never measured the distance, but I think it is about a mile.

MR. DORN: We are not through with Mr. Maxwell yet, and will not be for some time.

MR. CLUNIE: I have a witness here from the jail that I want to examine.

MR. DORN: I have no objection to let Mr. Maxwell be withdrawn for the present, and let this witness be placed on the stand.

[Here the witness was temporarily withdrawn, and instructed to be present to-morrow morning at nine o'clock.]

WILLIAM GRIFFITH.

A witness on behalf of contestant, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Mr. Griffith, you are confined in the city prison now, are you? Answer—Yes, sir.

Q. Where did you reside prior to that time? A. Broadway Street, between Montgomery and Kearny.

Q. That is in what district? What Senatorial District is that in? A. I don't know. It ain't in the Twenty-first.

Q. Did you ever live in the Twenty-first District? A. Yes, sir.

Q. When? A. About two years ago.

Q. Were you an officer of any club in this city and county? A. No, sir.

Q. Were you an officer of a club prior to the election? A. Yes, sir.

Q. Were you President of the Acme Social Club? A. No, sir.

Q. Were you Secretary of it? A. No, sir.

Q. The Arcade Club, rather? A. Sergeant-at-Arms.

Q. And you occupied that position how long? A. Just about two months.

Q. Were you in that position at the time this election was held? A. No, sir; I was not.

Q. Had you been, prior to that election? A. Yes, sir.

Q. How long had it been since you were Sergeant-at-Arms? A. Three months.

Q. Do you know Mr. Banks? A. Yes, sir.

Q. Did you see him prior to the election? A. No, sir.

Q. You never saw him at all prior to that time? A. No, sir.

Q. How long have you known him? A. Well, about two years ago last election.

Q. When did you see him last? A. I saw him since election.

Q. Where did you see him? A. I don't know where I did see him.

Q. Where have you been? A. I have been in the prison.

Q. You must have seen him in the prison then, didn't you? A. Yes, sir.

Q. Then you do know where you saw him? A. Yes, I saw him in the City Prison.

Q. Then you are making a mistake when you say you did not know where you saw him? A. Yes, sir.

Q. Did he visit you there? A. No, sir.

Q. How did you come to see him there? A. I have been removed from there.

Q. You were sentenced to the county jail? A. Yes, sir.

Q. You were never in the county jail? A. I went in first and come right down again.

Q. Who did that? A. The officer that took me there.

Q. What officer? A. I don't know what officer it is.

Q. How did he come to do that? A. That is by his orders, I believe.

Q. Was that by the Judge's orders? Didn't the Judge order you sent to the county jail? A. Yes, sir.

Q. For how long? A. A year.

Q. When was that? A. Over five months ago.

Q. And you saw Mr. Banks in the city prison at that time? A. No, sir.

Q. You have not seen him at all since then? A. Yes, I saw him after election.

Q. What day? A. I couldn't tell you the day.

Q. How long after election day? A. It was a good while.

Q. Was it a month? A. No, it was not a month.

Q. Was it fifteen days? A. Yes, sir; about that.

Q. What occurred between you and Mr. Banks there? A. Nothing.

Q. You did not have a word with him at all? A. No, sir.

Q. You did not say anything? A. No, sir.

Q. You said nothing about a pardon? A. No, sir; I didn't show myself.

Q. You kept out of the way? A. Yes, sir.

- Q. Do you know Captain Smith? A. Yes, sir.
- Q. When did you see him there? A. I see him there pretty regular.
- Q. He generally goes down there pretty regularly? A. Yes, sir.
- Q. Who did he go down there to see? A. He was there all by himself.
- Q. Who did Mr. Banks go there to see? A. I don't know who it was.
- Q. You know the people that are confined there? A. Yes, sir.
- Q. Was it Mr. Murray he was with? A. No, sir; I have not seen him since Mr. Murray has been there.
- Q. Did you take any part in Mr. Banks' election? A. No, sir. How could I? I was in jail.
- Q. With your people on the outside? A. No, sir.
- Q. Did you have any correspondence with the Arcade Club, during the time you were in jail, regarding Mr. Banks? A. No, sir.
- Q. Who was President of the club at that time? A. I couldn't tell you; I was in jail.
- Q. Do you know who the officers were? A. No, sir.
- Q. Who was the officer there at the time of election, do you know? A. What election?
- Q. You know there was an election held here a month or so ago, don't you? A. Yes, sir.
- Q. At the time of the election, who was President of that club? A. That I couldn't tell you. I was two or three months in jail about that time.
- Q. And you don't know who they were, and who they are now? A. No, sir.
- Q. Did Mr. Banks ever talk about getting a pardon for you? A. No, sir.
- Q. Did Mr. Williams come down there and try to get a petition for a pardon for you? A. There was something about a petition.
- Q. Do you know Mr. Williams? A. Yes, I know him when I see him.
- Q. You knew he was circulating a petition for your pardon, didn't you? A. I didn't know whether he was doing it or not.
- Q. You swear to that, do you? A. Yes, sir.
- Q. Are you positive of that now? A. Of what?
- Q. That you did not know that there was a petition ever circulated for your pardon? A. Yes, I know there was a petition, certainly.
- Q. And you did not know who was circulating that? A. I did not know.
- Q. You did not know how it was being done, or anything about it? A. No, sir.
- Q. Did you ever talk with Mr. Banks about that? A. No, sir.
- Q. Did you ask Mr. Banks to sign it? A. No, sir.
- Q. Did you ever ask Mr. Williams to get Mr. Banks? A. No, sir.
- Q. Did you ever talk with Mr. Williams about it? A. He said he was going to get a petition up or something.
- Q. Did he tell you he was going to get you pardoned? A. No, sir.
- Q. Did you ever speak to Mr. Banks about it? A. No, sir.
- Q. Did you tell to any officer of the city prison that you belonged to the Arcade Club, and that you took a special interest in Mr. Banks' fight? A. No, sir.
- Q. Do you know Charles Armiger? A. Yes, sir.
- Q. Did you ever have a talk with him? A. He approached me.
- Q. What did you talk with him about? A. He come up to me and said: "Them fellows are giving you the lash."
- Q. He said, "Them fellows are giving you the lash?" A. Yes, sir.
- Q. What object did he have? A. I don't know.

Q. Didn't you tell Armiger, in this city prison, in this city and county, that through your influence the Arcade Club had exerted their influence, and every member of it had worked for Mr. Banks, and that in consideration of it he had agreed to get you a pardon? A. No, sir.

Q. You are positive of that? A. I am positive of that.

Q. And the only conversation you had with Armiger was, he said that they were giving you the lash, and he didn't mention who they were? A. No, sir.

Q. He didn't mention William's name? A. No, sir.

Q. Nor no one else? A. No, sir.

Q. And you are sure of that? A. No, sir; I have never had any conversation with Armiger at all, since I have been in jail there.

[Here the further hearing was continued until to-morrow morning at nine o'clock.]

FOURTH DAY.

SAN FRANCISCO, CALIFORNIA,)
SATURDAY, January 5, 1889—9 o'clock A. M.)

Present: Justices Stafford and Boland, the contestant and respondent and their respective counsel, and Thos. R. Knox, official reporter.

GEORGE F. MAXWELL.

Recalled for further cross-interrogatories.

By MR. DORN: Where do you reside? Answer—No. 1911 Stockton.

Q. How far from that is the engine house of Four Hose Company? A. It is about a block, I guess.

Q. Do you know who were registered from the house where Four Hose is situated? A. I know some of the people that register from there, yes.

Q. About how many of them, do you know? A. Half a dozen, I guess; eight or ten probably.

Q. Do you know how many were registered from there at the last election? A. No, sir; I do not.

Q. You do not? A. No, sir.

Q. Do you know who is the teamster of Four Hose? A. The Driver, do you mean?

Q. Yes, I mean the Driver. A. A man by the name of Riley.

Q. Do you know who is the Steward? A. Mike Ryan.

Q. Do you know who the Foreman is? A. James Durham.

Q. Do you know who the Assistant Foreman is? A. No, I do not.

Q. Isn't it Frank Keene? A. No, I couldn't tell you whether Frank Keene is Foreman or Assistant Foreman.

Q. Do you know any of the hosemen? A. Yes, sir.

Q. About how many of them do you know? A. I guess I know them all by sight.

Q. About how many do you know? A. There are nine men in the company; there are about five or six of them hosemen; I know them by sight.

Q. Can you name any of them? A. I know Frank Keene by sight, and William Durham, and Gus Finn.

Q. Who else? A. James Brady. I don't recollect the names of the others.

Q. Do you know a man by the name of Fred. Jackson? A. Yes, sir; Jackson is one.

Q. Do you know a man named Michael Powers? A. Yes, sir; Powers is another one.

Q. Do you know any others? A. If you will call off the list I will tell you.

Q. Do you know any of the others? A. I know all the men by sight.

Q. Do you know how many extramen there are at Four Hose? A. There are six extramen; or rather there are six extramen, the Foreman and two permanent men.

Q. Where did these people that belonged to Four Hose live? A. They live at various places.

Q. Do they live in the engine house? A. Some of them do.

Q. About how many of them? A. I couldn't tell you how many of them did.

Q. What is the number of the house where the Hose Company is located? A. It is No. 4.

Q. I mean the number of the street. What street and number? A. It is in the eighteen hundred block; I don't exactly know the number.

Q. It is on Stockton Street, isn't it? A. Yes, sir.

Q. Isn't the number 1802?

MR. CLUNIE: I want at this time to interpose an objection to all this testimony as not cross examination, in any form. I will say to the witness that I shall ask him to refuse to answer these questions, on the ground that they have no bearing on this case at all. I understand that they are seeking delay in getting this before the Legislature, and I shall state that I shall close my case this morning, and ask your honor to certify it to the Legislature. I understand that not from Mr. Dorn, but some one else that knows their purpose.

MR. DORN: This is not so.

Q. What is the number of that house? Isn't it 1802? A. It is about that number.

Q. Do you know a man by the name of Charles Bass? A. Yes, sir.

Q. Does he belong to Hose Company No. 4? A. He is, I understand, a substitute there.

Q. Do you know? A. No, I don't know. The Foreman can give you that information.

Q. Is there a man by the name of Antonio Benavides belongs to that company?

MR. CLUNIE: I object as not cross examination, in any way.

MR. DORN: I ask your honors to instruct the witness to answer.

THE COURT: The witness does not refuse.

MR. CLUNIE: I instruct him to refuse. I want it noted that Mr. Dorn has announced himself as intending to drive these proceedings out so as it will be impossible for the Legislature to receive these proceedings on the second week of the session of the Legislature, as provided by law. I ask the witness to decline to answer the question.

MR. DORN: I say that any person that has made any such statement has deliberately lied, and I will state that I never made such a statement of any kind.

Q. Do you know Antonio Benavides? A. I have just been instructed by my attorney, Mr. Clunie, not to answer.

MR. DORN: I ask your honors to instruct the witness to answer.

THE COURT: [To the witness] Answer the question.

MR. CLUNIE: I understand that your honors have the same powers as Notaries Public. Your honors have no power to require a witness to answer, I believe.

THE COURT: [To the witness] Answer the question.

MR. CLUNIE: Note an exception to the ruling.

[Here the reporter reads the last question to the witness].

A. Yes, I know him.

By MR. DORN: Do you know where he lives? A. No, sir; I do not.

Q. Do you know whether he was registered from Hose Company No. 4?

A. I understood that he was.

Q. Who told you so? A. I don't recollect.

Q. You knew that he was, then? A. No, sir, I don't, only from hearsay.

Q. Is Antonio Benavides a member of the Fire Department? A. He is an extra driver in the Fire Department.

Q. Do you know George T. Bell? A. No, sir; I do not.

Q. Do you know whether he was registered from Hose Company No. 4?

A. No, sir.

Q. You don't know the man at all? A. No, sir.

Q. Does he belong to the Fire Department? A. I don't know.

Q. You don't know whether he does or not? A. No, sir.

Q. You would know whether he belonged to Hose Company No. 4, wouldn't you? A. If he was a permanent extraman in the house I would know him.

Q. Do you know Edward F. Green? A. Yes, sir.

Q. Does he belong to the Fire Department? A. He was a substitute extraman.

Q. Do you know whether he was registered from Hose Company No. 4?

A. Yes, sir.

Q. Do you know where he lived? A. I never knew him to have a permanent place of residence.

Q. Do you know a man named James McKenna? A. Yes, sir.

Q. Is he a member of the Fire Department? A. He is an extra driver.

Q. Then there were five or six who were extra drivers for Hose Company No. 4? A. I did not speak of them as extra drivers.

Q. This man is an extra driver in the department? A. McKenna is; yes, sir.

Q. Do you whether he was registered from Hose Company No. 4? A. Yes, sir.

Q. Do you know where he lives? A. Do you mean to-day?

Q. Yes, sir; to-day. A. No; I do not.

Q. Do you know where he lived at the time of this election? A. He was registered from Four Hose, and claimed that as his residence. I will state that, with extra drivers, it is customary for them to sleep in any house they want to, or any place convenient for the Engineers, so they can get them.

Q. It is customary for them to sleep where they please? A. Well, near the engine house; in the truck or hose house; wherever they see fit.

Q. Around wherever they please? A. Wherever the District Engineer sent them. They are in those houses for the convenience of the District Engineers.

Q. Do you know how many hose houses and truck houses there are in that Twenty-first Senatorial District? A. There is Four Hose, Three Engine, and Four Truck.

Q. There are three different ones? A. Yes, sir.

Q. Where is Number Two Truck? A. Two Truck is on Broadway Street, between Dupont and Stockton.

Q. It is in the Twenty-first Senatorial District, is it not? A. No, sir; it is not.

Q. Do you know the members of Two Truck? A. I know the majority of them, I guess.

Q. Do you know Michael Flarety? A. I know a man by the name of Flarety; I don't know whether it is Michael or not.

Q. He is the driver there, is he? A. Yes, sir.

Q. Do you know Alfred Florance? A. Yes, sir.

Q. What is his business there? A. He is a Tillerman.

Q. Do you know Peter Fleming? A. Yes; I know Peter Fleming.

Q. What is his position there? A. He is the Foreman of the company.

Q. He is a particular friend of yours, isn't he? A. Yes, sir.

Q. Do you know where he lived? A. Do I know where he lives to-day?

Q. Yes, sir. A. No, sir; I do not.

Q. Do you know where he lived at the time of the election? A. No, sir.

Q. Wasn't he at the time of the election registered from 638 Green Street? A. I don't know.

Q. You don't know where he was registered from? A. No, sir.

Q. Isn't it the proper thing for him to register from the house where the fire company is situated? A. No, sir.

Q. Do you know if during the last election any organization, or any branch of a political organization, was located at 638 Green Street? A. Yes, sir; there was a Democratic Registration Bureau.

Q. That was the headquarters of the Democratic Registration Bureau, was it? A. Yes, sir.

Q. And if this Mr. Fleming was registered at all from there, he was registered from the Bureau, was he not? A. From the Bureau? I guess not. No.

Q. Do you know what portion of the house the Bureau occupied? A. It occupied the cellar.

Q. Do you know what is over the cellar? A. There was a big rooming house there.

Q. Do you know a man by the name of James Cumiskey? A. Yes, sir.

Q. Where is he located? A. He is an extraman in No. 2 Truck.

Q. Do you know where he was registered from in the last election? A. No, sir; I do not.

Q. Wasn't he registered from No. 4 Hose? A. Not that I know of.

Q. Do you know whether he was registered from No. 2 Truck in the last election? A. I couldn't tell you where he was registered from.

Q. Don't you know he was registered from No. 3 Morse Place? A. No, sir.

Q. No. 3 Morse Place is in the Twenty-first Senatorial District, isn't it? A. I don't know where No. 3 Morse Place is.

Q. You are pretty well acquainted there, are you not? A. No, sir.

Q. Don't you know where No. 3 Morse Place is? A. No, sir; I do not.

Q. Do you know a man by the name of James Adams? A. Yes, sir.

Q. Does he belong to the Fire Department? A. He is an extraman of No. 2 Truck.

Q. Wasn't this man James Adams registered from No. 638 Green Street at the last election? A. That I cannot tell.

Q. Do you know a man by the name of William Finnegan? A. Yes, sir.

Q. Does he belong to the Fire Department? A. Yes, sir.

Q. Where was he registered from at the last election? A. I don't know.

Q. Don't you know he registered from 638 Green Street? A. No, sir; I do not. I don't pay any attention to their registering.

Q. Do you know a man by the name of John Finnegan? A. I believe that is a brother of the other Finnegan.

Q. Does he belong to the Fire Department? A. I believe he is a member of Truck 1, on O'Farrell Street, between Dupont and Stockton.

Q. Wasn't he registered from 638 Green Street, in the last election? A. I don't know. I had something else to do besides hunting up where people registered from.

Q. Do you know the members of No. 3 Engine Company? A. I know some of them by sight, and some to speak to; yes, sir.

Q. Do you know a man by the name of Patrick Barry? A. Yes, sir.

Q. Is he a member of that company? A. He is the Foreman of No. 3 Engine.

Q. Where is No. 3 located? A. It is on California Street between Leavenworth and Hyde, I believe.

Q. Is that in the Twenty-fourth Senatorial District? A. Yes, sir.

Q. Do you know James Fraser? A. I think that is the name of the Engineer.

Q. Just give me as many of them as you can remember. A. I know the Driver, Holmes, the Engineer, and Barry.

Q. Barry is the Foreman? A. Barry is the Foreman.

Q. Do you know a man by the name of William Geddes? A. No, sir.

Q. He is put down in the report as a Stoker. A. No, sir; I don't know him.

Q. Do you know Lorenzo Henry? A. There is a man by that name in the company, I believe, but I never saw him.

Q. Do you know a man in that company by the name of George W. Lawton? A. Yes, I know Lawton.

Q. Do you know a man by the name of Shields? A. I know there is a man in that company, but I don't know his full name.

Q. Do you know Timothy J. Driscoll? A. Yes, I know Driscoll.

Q. Do you know a man by the name of James T. Britt? A. Yes, sir.

Q. Do you know John J. Sullivan? A. Yes, sir.

Q. Is he a member of that company? A. He is.

Q. Is that the candidate for Senator at the last election? A. Yes, sir.

Q. Is Mr. Sullivan at the present time connected with that company? A. I believe not.

Q. Don't you know, as a matter of fact, that he is? A. No, I don't. I understand that Mr. Sullivan resigned from Three.

Q. When did he resign? A. I couldn't tell you. I have not seen his resignation.

Q. You are in possession of the records of the Fire Department, are you? A. I am.

Q. And those records would disclose that resignation? A. They would if it had been passed on by the Board of Fire Commissioners.

Q. Suppose it had been passed on by them? A. It would not appear on the records until passed upon by the Board.

Q. If a man sends in his resignation, and it is not passed upon by the Board, he is still a member of the department? A. He is a member of the department until such time as the Board passes on the resignation.

Q. Then, so far as you know, John J. Sullivan was a member of that company, and is to-day? A. He was a member of the company, and I understand he has resigned.

- Q. Then that is hearsay? A. Yes, that is hearsay.
- Q. Then you know that he was, and you don't know that he has resigned? A. Yes, sir.
- Q. That is the same Sullivan who is the contestant in this controversy, is it? A. Yes, sir.
- Q. Do you know a man by the name of Michael Dougherty? A. Yes, sir.
- Q. Is he connected with that company? A. Yes, sir.
- Q. Do you know a man by the name of George Holmes? A. Yes, sir.
- Q. Is he connected with that company? A. Yes, sir; he is connected with that company.
- Q. Do you know whether these men I have named to you resided in the engine house there on California Street? A. I don't know anything about who resides in the engine house on California Street.
- Q. Do you know who was registered from there in the last election? A. No, sir.
- Q. Do you know a second man by the name of Patrick Barry? Do you know another man by the name of Patrick Barry, connected with that same engine? A. Do you mean the same man?
- Q. No; I don't mean the same man. There is a Patrick Barry put down in the record as Foreman? A. Yes, sir; that is the man I know.
- Q. Do you know another man by the same name, who is connected with the same company? A. No, sir; I do not.
- Q. Do you know such a man is connected with that company? A. Yes; I know that he is Foreman of Three Engine.
- Q. Leaving out Patrick Barry who is Foreman altogether. A. I don't know any other Patrick Barry.
- Q. If there was such a man you would know him? A. I think I would.
- Q. Then he is not connected with that company? A. Not to my knowledge.
- Q. Then, if a man by the name of Patrick Barry registered from that engine house at the last election, he was not in that house? A. He was not paid by the company.
- Q. Do you know a man by the name of Patrick Nolan. A. No, sir; I do not.
- Q. Is there any such man connected with the department? A. I don't know until I refer to the records.
- Q. Do you know a man by the name of William Peterson? A. No, sir.
- Q. Is there any such man connected with that engine? A. I couldn't tell you that. He may be a substitute. We keep no records of the substitutes.
- Q. If any such a man has ever lived and been permanently attached to Engine Number Three, you would know him, wouldn't you? A. No; I wouldn't be likely to know him.
- Q. How is it you know all the rest of them? A. Because I have been acquainted with them.
- Q. You say you would not be likely to know this man, but you do know all of the others? A. I might, but not know his name.
- Q. Is there anybody around there that you don't know? A. Yes, sir.
- Q. Members of the department, and those connected with it? A. No, sir; not men.
- Q. Is there anybody now connected with the Fire Department that you don't know? A. Yes, sir; there is a whole lot of them connected with the Fire Department, and I couldn't tell until I look at the record.
- Q. Do you know a man by the name of J. B. Lavaroni? A. Yes, sir.

- Q. Where does he live? A. He lives up on some of those Dago alleys.
- Q. Isn't this man, J. B. Lavaroni, the Steward of No. 1 Hose Company?
A. Yes, sir.
- Q. Then you do know him? A. I just told you I knew him.
- Q. Then you say he lived up in one of the Dago alleys? A. I just told you that is where he lives.
- Q. That is the particular branch you were Captain of in the last election, was it not? A. When?
- Q. In the last election. A. I told you I was in the Third Precinct of the Thirty-third District.
- Q. And you were the Captain? A. I told you I was one of the Captains.
- Q. What other Captain was there there? You did not mention that yesterday. I supposed you were in the exclusive charge and command. What other captain was there? A. I couldn't tell you; the County Committeeman regulates that part of it.
- Q. Did you say there was another man in charge there coöperating with you? A. Yes, sir.
- Q. And you don't know his name? A. I do know his name, but there were several people, and what positions they held, whether Captains or Lieutenants, or what, I don't know.
- Q. You said just now, I believe, you were one of the Captains up there?
A. Yes, sir.
- Q. Now I ask you the direct question, who were the others? A. I understood that Mike Spinetti.
- Q. Who were the others? A. I couldn't tell you. A man by the name of Lundign, I believe, was his name—an Italian—was doing a good deal of work up there.
- Q. These two men were also Captains? A. That I don't know. The County Committeeman can tell you better than I can. I understood there were others.
- Q. They were also assisting you in that precinct? A. Yes, sir.
- Q. In behalf of the Democratic party? A. Yes, sir.
- Q. Who employed them? A. The Democratic County Committee.
- Q. The Democratic County Committee employed you, didn't they? A. No; they did not employ me; my services went to the Democratic County Committee for nothing.
- Q. I understood you to say yesterday you were placed there as Captain by the Democratic County Committee? A. I was asked to go there and assist the County Committee.
- Q. These men, you say, were as active as you were in promoting the interests of the Democratic County Committee on that day? A. Yes, sir; I think they were.
- Q. And assisted in the same manner? A. Probably assisted some for all I know.
- Q. To the best of your knowledge and belief they assisted more than you did? A. Well, I don't know: they assisted what they could there.
- Q. Do you know a man by the name of Victor Dem Artini? A. Yes, sir.
- Q. Where does he live? A. I think he lives on Union Street.
- Q. Hasn't he recently been added to the Fire Department? A. He has been appointed to Seventeen Engine House.
- Q. A new engine? A. A new engine.
- Q. Where did he live prior to that? A. He lived where he lives to-day, on Union Street.

Q. Wasn't he also Captain in the same precinct with you on the day of election? A. Yes, sir. I don't know what office he held there. He was an assistant in the precinct.

Q. He was working in the same way you were. That made four that were working in that precinct? A. Yes, sir.

Q. And since the election he has been about the Fire Department, and has become a member, you say, of No. 17? A. No, sir; he went in there when the company was organized, last July.

Q. Do you know a man by the name of Wolf, who was also a Captain or Lieutenant in the same precinct on election day? A. Yes; I think I do.

Q. He was there assisting also in the precinct, was he? A. Yes, sir. I think there was a man by the name of Wolf that was one of the Democratic officers of election there. I know him by his nick-name, that is all.

Q. As a matter of fact, didn't this man Wolf get drunk, so as to be unable to be very efficient in his services, and wasn't he discharged during the day, and wasn't Mike Spinetti put in his place? A. No, sir; I think not.

Q. You think they were both there acting all day? A. Yes. There was a man they called Levy.

Q. Do you know an organization at North Beach called the Dauntless Club? A. The Dauntless Club; yes, sir.

Q. Where are their headquarters? A. Somewhere on Green Street, I believe.

Q. Aren't they in the same building with Mike Spinetti? A. I think they are all underneath.

Q. Don't he live in the same building where their headquarters are located? A. I don't know where Mike Spinetti lives, personally. I think his father owns this house where this hall is.

Q. Do you know of the political affiliation of the Dauntless Club? A. Yes, sir; I know them to be Democrats.

Q. Do you know what price was paid to them for their vote at the last election for Senator? A. The price paid for them?

Q. Yes, sir. A. I don't know as they got any price for their vote.

Q. Between four and five in the afternoon of election day, do you know what arrangement was made between certain persons on behalf of Mr. Sullivan and the Dauntless Club for their vote for Senator? A. There was no arrangement made with the Dauntless Club.

Q. How do you know? A. Not to my knowledge.

Q. Then say so.

MR. CLUNIE: You say what you want to, as you are the witness, and Mr Dorn is not.

By MR. DORN: Where were you between four and five on election day? A. I was between the First, Second, Third, and Fourth Precincts.

Q. Did you see John J. Sullivan, the contestant in this case, about that time of the day? A. Between four and five?

Q. Yes, sir. A. I couldn't tell you; I don't recollect.

Q. Between four and five did you see Patrick Barry, Foreman of No. 3 Engine Company, on election day? A. I don't recollect that either.

Q. Do you recollect some time in the afternoon of election day seeing Patrick Barry and John J. Sullivan, the contestant in this case, together up in that neighborhood? A. I recollect seeing Mr. Sullivan about one o'clock in the afternoon, I guess. I don't recollect whether Mr. Barry was with him or not.

Q. Do you remember seeing them together in the afternoon of election day at all? A. No; I don't remember seeing them together.

Q. They might have been together and you not see them? A. They might have been together and I not see them; yes, sir.

Q. Then you say that if any arrangement of that kind was made with the Dauntless Club, or with any members of the Dauntless Club, you don't know anything about it? A. No, sir; I do not.

Q. You do know that their affiliation was Democratic, and that your impression is that they voted for the Democratic candidate? A. Yes, sir; I believe they voted for the Democratic party.

Q. Then some arrangement might have been made between parties and that club, and you not know anything about it? A. Well, I don't think so.

Q. Are you a member of the club? A. No, sir.

Q. Then how would you know about it? A. I have got a good many friends in the club.

Q. You were not a party to any such arrangement? A. If anything of that kind had been going on, very likely some of the members would have told me.

Q. You were not a party to any such arrangement, were you? A. No, sir.

Q. And you are not a member? A. No, sir.

Q. How would you know it then? A. Because I would have been told.

Q. The reason you would know about it is, you think, that if such an arrangement had been made, somebody would tell you about it? A. Yes, sir.

Q. And that is the only reason you swear it was not made? A. I swear that no such arrangement was made, to my knowledge.

Q. You said you knew a man named Fleming, of No. 2 Truck, I believe? A. Yes, sir.

Q. Do you know whether he was a United States Marshal at the last election? A. Yes, I believe he was.

Q. You said you knew a man named Lavaroni, of No. 1 Hose, didn't you? A. Yes, sir.

Q. You knew a man by the name of Edward Lanigan? A. Yes, sir.

Q. And Victor Demartini? A. Yes, sir.

Q. Do you know whether these men I have just mentioned were United States Marshals at the last election? A. I understood they were extra United States Marshals, without pay, on election day.

Q. Were you a United States Marshal? A. Yes, sir.

Q. Those men that I have named were the Democratic Captains, you said, in that precinct? A. Yes, sir.

Q. Including yourself? A. Some of them were; yes, sir.

Q. And you were all stationed there at that precinct, were you? A. They were stationed around in that district; not particularly in that precinct.

Q. You testified in your direct examination to a conversation which took place at Greenwich and Jansen Streets, at the Fourth Precinct of the Thirty-third District, I believe? A. The Fourth of the Thirty-fourth.

Q. About the time the returns were being made up? A. That was the time; yes, sir.

Q. Referring to the conversation between yourself and Mike Smith, who were present at that time? A. Mr. Banks was present, and Mr. Ryan. There was quite a number of other people there I don't know.

Q. Wasn't Mr. Sullivan there? A. He was there, but whether he was there when this conversation took place, I couldn't say. He was there before or after.

Q. He was there before or after this conversation took place? A. Yes, sir; he was there. We all went into that saloon to take a drink.

Q. Who were you drinking with? A. I don't recollect who we drank with first. We drank with several parties. We drank with Mr. Banks, and I think we drank with Mr. Smith and several other parties.

Q. You also had a drink with Mr. Sullivan, didn't you? A. I think we did; I don't know.

Q. You say Mr. Banks was present, Mr. Smith was present, and yourself. Anybody else? A. Ryan.

Q. Anybody else that you know of? A. I don't recollect now.

Q. To the best of your knowledge and belief, those were the only persons present at that conversation? A. There were other persons present, but I don't know who they are.

Q. At this same time isn't it the fact that you all gathered there because that was the last precinct to be returned, and that Mr. Sullivan and Mr. Banks were both there? A. They were both there.

Q. And they were there when Mr. Ryan was there, were they not? A. He came around there for about five or ten minutes—may be fifteen minutes—to look at the count.

Q. Wasn't Denny Sullivan, District Engineer of the Fire Department, there too? A. He drove up there in his buggy.

Q. Did you not hear the conversation there between Mr. Banks and Mr. Sullivan, the contestant and respondent in this matter, concerning the fairness or unfairness of the election between them? A. Yes, I did.

Q. Didn't you hear Mr. Banks ask Mr. Sullivan, or make a remark something to this effect, although I don't pretend to state the exact words: "Well, Sullivan," or "Johnny, when we went into this thing we promised to give each other a square fight, and I have done it." And didn't you hear Sullivan there acknowledge that the fight, so far as Banks was concerned, and the canvass, had been fair and square? A. I recollect Banks making a remark of that kind, but what answer Sullivan gave I wouldn't be positive.

Q. Don't you remember, as a fact, that that was the tenor of the answer? Those were not the exact words, of course. A. I don't recollect what answer was made. I recollect Mr. Sullivan shaking hands with Mr. Banks.

Q. Wasn't Mr. Sullivan's answer, "I have no fault to find with you," addressing Banks, "but I was beaten by my friends?" A. Yes, sir; I recollect that remark being made by Mr. Sullivan.

Q. Wasn't a man by the name of Steve Ford mentioned, as one of the men who should have been his friend, and who had not been his friend in the matter? A. Yes, sir.

Q. Do you know a man by the name of Edward Ettridge being mentioned in the same way? A. Yes, sir.

Q. Didn't you then say, with regard to these men, Murray, that have been on the stand here, that you thought instead of being friendly with Smith, they should have assisted you in this fight, because you had done all you could to get a pardon for James Murray? A. What is that?

Q. I say, didn't you say to Mr. Smith, and in the presence of Mr. Banks and the other people there, that you thought the Murray boys ought to have stood in with you, and that you expected them to have done all they could, as you had tried to get Mr. Murray a pardon? A. My recollection is, that Mr. Smith told me he got away with three friends of mine up on Telegraph Hill I didn't know anything about, and I said then, "I do, and it was the Murray family," and that those people ought to be my friends.

Q. Why did you think they ought to be your friends? A. Because I had been acquainted with them a number of years.

Q. And you had tried to get him a pardon, hadn't you? A. Yes, sir.

Q. And they knew you had tried to get it? A. They knew that.

Q. As a matter of fact, you testified yesterday, you knew a man by the name of Fleming pretty well? A. Yes, sir.

Q. Didn't you assist in procuring for Fleming, while he was a member of the Fire Department, a second position of janitor? A. No, sir; I had nothing to do with it.

Q. Don't you know, as a matter of fact, that a resolution was passed afterwards by the Fire Commissioners, that no man should hold two positions, and that Fleming thereupon pretendedly resigned and put another man in his place? A. I do not know that.

Q. And that the other man has never done the work or drawn the pay, but that Fleming is drawing it to-day? A. No; I don't know that as a matter of fact.

Q. You don't know that, as a matter of fact? A. No, sir.

Q. But you have heard of it? A. I have heard a rumor.

Q. And you have told different people that that was the case? A. No, sir; I have never told anybody anything of the kind.

Q. Do you know where Banning Place is? A. No; the name is familiar, but I couldn't tell you where the street is.

Q. How far was it from the polling place of the Third Precinct of the Thirty-third Assembly District, at the last election? A. That I couldn't tell you.

Q. Isn't it right around the corner? A. I don't know what the name of the street is.

Q. There is a narrow street there? A. There are a couple of narrow streets there; yes, sir.

Q. In the immediate neighborhood? A. Right in the immediate neighborhood; yes, sir.

Q. And they are very close to where the polling place was located in the Third Precinct of the Thirty-third Assembly District? A. Very near; they are in the same block.

Q. You don't know whether it is called Banning Place or not? A. I couldn't tell you the names of the streets.

Q. One of these streets is westerly from the polling place, isn't it? A. Yes, sir.

Q. With regard to the name, isn't that narrow street or alley a little to the west of the polling place of the Third Precinct of the Thirty-Third Assembly District, the corner around which yourself and the other numerous Captains of that precinct took people that you were persuading by various means to vote the Democratic ticket? A. Took them around where?

Q. Took them around in that alley? A. Not to my recollection. Some people may have taken them around there.

Q. Did you do that? A. I don't recollect that.

Q. Do you know whether the other Captains of that precinct did? A. No; I saw some of them talking in there.

Q. Did you go in that alley at all? A. Oh, yes, I go through all of those alleys.

Q. Did you go in that alley on that day? A. Yes, sir.

Q. With voters of that precinct? A. I don't know whether with some of the voters. I went through, simply.

Q. What did you go in there for? A. I went in there to talk with them privately.

Q. Did the other Captains go in there to talk with them privately? A. I couldn't tell you.

Q. Did you see them? A. Yes, I saw some.

Q. With voters of the precinct? A. I couldn't tell you with voters of the precinct. I went in there to take a short cut.

Q. And the purpose of taking those men there was to talk to them privately? A. Yes; sometimes to go through and get a drink.

Q. That was the purpose for which you and the other Captains used that alley on that day, to talk privately with voters? A. And to walk through the street the same as I would any other street and alley.

Q. About how many men did you talk privately with, and walk around in that alley with, on that day? A. I don't recollect the number.

Q. Was it as many as five? A. I don't recollect.

Q. Was it as many as ten? A. I told you I didn't recollect.

ANTONIO GIOTTO.

A witness on behalf of contestant, being duly sworn, testified as follows:

Direct Interrogatories.

By MR. CLUNIE: You were subpoenaed here as a witness, were you?
Answer—Yes, sir.

Q. And you got your fees? A. Yes, sir.

Q. Where were you on election day? A. In the city.

Q. Were you up on Polk Street that day? A. Oh, yes, sir.

Q. Were you on the corner of Polk and Broadway? A. Yes, sir.

Q. Did you have any conversation there with any person regarding voting for Senator in the Twenty-first District? A. One man there, corner of Polk and Broadway, he asked me if I voted or not. I said, "I don't vote this year, because I didn't come in time for the registration, because I worked in Contra Costa County. I came here the ninth, and I don't want to go to jail." On election day here in the city, corner of Broadway and Polk, one man, I don't know him, asked me if I vote, and I said, "No, not this year." He asked me if I wanted to go around and make money, and I said I didn't know how, but what was the way he wanted me to make money, and he asked me if I wanted to take \$10, and he showed me \$10, to go working the ticket for one man he called it Bank; and he said, "Here is \$10; go around and do all you can for him." That is all he said to me. I don't know the man at all. I asked the name, and I asked where he lived, and I asked the profession. I did not know, and he did not want to say anything to me.

Q. You asked him his name, and he didn't tell you? A. No, sir.

Q. And he asked you to take \$10 and go around and work for Banks?
A. Yes, sir; for Banks. And I don't know Banks or Sullivan at all.

Q. Did anybody approach you at another place on that day about this?
A. And on the corner of Broadway and Stockton.

Q. What did that man say to you? A. That man, he asked me if I wanted to make money, and I said no: and he showed me one \$20 and \$5 piece, \$25, to go around making votes from my friends for the Republican ticket. I said, "I ain't in such a profession; I don't do it."

Q. Did he say anything about Banks, there? A. He mentioned some man's name; I can't remember it. There he offered me \$25, corner of Broadway and Stockton.

Cross Interrogatories.

By MR. DORN: Do you know whether Broadway and Stockton is in the Twenty-first Senatorial District? A. I don't know; I can't understand that, because I ain't much posted about politics.

MR. DORN: I suppose, as a matter of fact, you will admit that that is not in the Twenty-first District, Mr. Clunie?

MR. CLUNIE: I don't know that. Broadway and Polk is in the district.

THE WITNESS: That is a man that offered me \$10 to vote for Banks against Sullivan, and I said, "I don't do it."

MR. CLUNIE: Broadway and Polk is not in the Twenty-first Senatorial District.

By MR. DORN: How much money were you offered to work for Mr. Sullivan? A. Oh, no money at all.

Q. No money at all? A. Oh, no; I wouldn't sell myself. I am twenty-four years in California, my dear friend. I know.

Q. I don't suppose you would sell yourself at all, only I wanted to know. You say somebody offered you money to work for Banks, as you say? A. Yes, sir.

Q. Now, I want to know how much anybody offered you to work for Mr. Sullivan? A. None.

Q. Nobody asked you to work for Mr. Sullivan at all? A. No, sir.

Q. Did anybody tell you to vote for Mr. Sullivan? A. No, sir.

Q. Nobody told you to vote for Mr. Sullivan? A. No, sir.

Q. You did not know Mr. Sullivan was a candidate for office, did you? A. No; because I didn't get in time.

Q. You lived over there in the Twenty-first Senatorial District? A. No; corner of Kearny and Jansen.

Q. You were around all day over there on election day? A. No; I don't go on election business. I go to my work. I have got some houses in charge for some kind of agent here in the city. This young man [indicating William Maxwell] come to me to subpoena me where I was working, he paid me the \$2 and I come here.

Q. What did he tell you when he gave you the subpoena? A. He called me into Court.

Q. Did he tell you what he wanted you to testify about those things? A. No, sir.

Q. How did he know what you were going to testify to? A. I don't know.

Q. Who did you ever tell what you were going to testify to? A. I am old man enough for that.

Q. But you don't understand me. A. Yes, I understand you perfectly.

Q. Since election day you have never told anybody about these occurrences, have you? A. No, I don't tell anybody.

Q. You have never told anybody at all? A. No.

Q. You have never told anybody? A. No.

Q. If I understand you, you say that from election day till the day you came on the stand, you have never told anybody about these things? A. Oh, yes, I tell here at the corner one day—corner of Bryant and Fourth.

Q. Who did you tell? A. They were talking about election at the time election was over; about four or five days after that I was going down below to buy lumber at the wharf, and there were two or three men there talking, and they said to me, "Didn't you make any money at all this year?" and I said, "I don't want to make money. People come to me and offered me money."

Q. Who were those men? A. I don't know. I don't keep these things.

Q. You don't know? A. No, sir.

Q. And that is all you said to them, that somebody offered you money, but you didn't make any? A. No.

Q. That is all? A. Oh, no.

Q. What else did you say? A. Well, I said it.

Q. Is that all you said to them? A. Yes; I said "I don't sell myself."

Q. And that is all you said, was it? A. Yes, sir.

Q. Then if you never told this gentleman who subpoenaed you what you were going to testify to, then somebody else had told him, had they?
A. Yes, sir.

WILLIAM MAXWELL.

A witness called on behalf of contestant, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Are you a resident of the Twenty-first Senatorial District? Answer—I am.

Q. You have lived there for how long? A. About twenty-one years.

Q. You were living there at the last election? A. I was.

Q. Where were you on the day of election? A. I was in the Third Precinct of the Thirty-fourth District.

Q. Where is that situated? A. It is situated corner of Montgomery Avenue and Greenwich.

Q. Do you know a man by the name of Lynch? A. I do.

Q. On that day did you see Mr. Lynch in that precinct? A. No, sir; not on that day. I saw him previous to that.

Q. Where did you see him previous to that? A. I saw him about two weeks before election in a saloon on Montgomery Avenue.

Q. Did you have any talk with him on that day? A. Yes, sir.

Q. Did you have any talk with him with relation to Mr. Banks? A. Yes, sir.

Q. What was that conversation? A. We had several drinks, and walked out about half-past eleven o'clock at night, and Mr. Lynch lives in Salmon Alley; and I said, "I see you are against Johnny Sullivan," and he said, "I am." I asked him, "For what reason? I thought you were a Democrat." He said, "So I am a Democrat, and I am for the whole Democratic ticket, but I am for Banks; I have taken this man's money, and I am going to stay with him, and I have taken his money, and I am going to do all I can for him."

Q. That was Mr. Lynch? A. That was Mr. Lynch. He said, "I am against Johnny Sullivan, and I have got Banks' money, and I am going to do all I can for him."

Q. Were you in Judge Finn's Court during the recount? Did you see the ballots of the Seventh Precinct of the Thirty-third District, during the recount? A. Yes, sir.

Q. Where were you at that time? A. I was sitting right alongside the stringer.

Q. Did you have an opportunity to see every ballot as they came out of the box? A. I saw every ballot that came out of the box and was put on file there.

Q. Did you notice anything peculiar about the ballots there? A. Yes, I did.

Q. What was it? A. I noticed a good many Democratic tickets came out straight. There was names had one or two scratches on them, and I noticed a waving line in the name of Mr. Sullivan for Senator, and it wasn't a straight line, but a wavering line, and sometimes it went in the sides.

Q. How often did that occur? A. To the best of my belief, forty or fifty times.

Cross Interrogatories.

By MR. DORN: The Deputy Sheriff was the stringer? A. Yes; he was the stringer.

Q. He had just as good an opportunity to see it? A. He had just as good an opportunity to see it as I did—yes, sir.

Q. If he swore to twenty-five—to some twenty-five or thirty times—he is mistaken? A. Yes, he is possibly mistaken; and I may be mistaken in the number. The number was over twenty-five, I am positive.

Q. You kept no tally? A. I kept no tally.

Q. You now state it from memory alone? A. I now state it from memory alone, as they came out one after the other.

Q. Were you present at the time the Second Precinct of the Thirty-third was counted? A. I was.

Q. Did you take off any tally there for Senator? A. I did.

Q. About what was the result you arrived at? A. I think Mr. Sullivan gained two votes in that precinct.

Q. Don't you know that that is not true? A. No; I know it is true. I am swearing on the stand here, and you cannot tell me what is true and what is not. I kept a tally, and that gave Mr. Sullivan a gain of two votes in that precinct.

Q. And you kept an honest tally? A. I kept an honest tally, just as honest as I could.

Q. That is very variable. A. Never mind how variable it is.

Q. You were pretty active in the last canvass during the last election? A. Probably no more than anybody else.

Q. Do you suppose everybody else in San Francisco took as active a part as you did? A. I suppose they did.

Q. Don't you know, as a matter of fact, you took a great deal of interest, and more than some people? A. I suppose I did more than some people, but I don't suppose so much more than anybody else.

Q. You are a member of the Confidence Club, are you? A. Yes, sir; I am.

Q. You know John J. Sullivan? A. Yes, sir.

Q. He is a particular friend of yours? A. Yes; he is a particular friend of mine.

Q. You are at present employed in the Tax Collector's office? A. Yes, sir.

Q. Were you, at the time of election, employed in the Tax Collector's office? A. Yes, sir.

Q. Did John J. Sullivan get your position for you in the Tax Collector's office? A. No, sir.

Q. He was rather active in getting it for you, wasn't he? A. No, sir; he was not. I never asked Mr. Sullivan in my life to do anything for me.

Q. You wouldn't allow him to do anything for you? A. If it was necessary for him to do it, I would allow him to do it.

Q. And if it was necessary, you expect him to do it? A. Yes, sir; if it was necessary.

Q. Your relations have been such that you would expect him to do it? A. No, sir.

Q. You don't claim anything for your political services? A. Not my services; no, sir.

Q. Not at all? A. No, sir; nothing but friendship.

Q. Which precinct were you in during the last election? A. I was in the Third Precinct of the Thirty-fourth.

Q. Were you a Captain there, or only a Lieutenant? A. I was a Captain.

Q. Who were the other Captains in that precinct? A. There was no other Captain I know of, except Mr. Buckley, of the Republican party.

Q. You had charge of the whole works there for the Democratic party, did you? A. I don't know as there was any works to have charge of.

Q. You were in command? A. I was simply appointed there to look out for the votes.

Q. If there was anybody else there, they were simply Lieutenants under you? A. I don't know of any such office at all.

Q. Do you know of any such office as Captain? A. You might call me Captain. I was appointed by the County Committee to see that the tickets were there on the table, and that there was a man there to challenge.

Q. How many men did you employ on that day? A. There were five ticket peddlers and one challenger.

Q. You employed six? A. Yes, sir.

Q. You employed none to watch? A. No; I did all the watching.

Q. Yourself only? A. Me and Frank Hussey.

Q. And you paid him? No, sir; he got nothing.

Q. Who was Frank Hussey? A. He was a resident of the Thirty-fourth District.

Q. He used to be a member of the Assembly, didn't he? A. I believe he was four years ago.

Q. And he was elected on the Republican ticket? A. I believe he was, four years ago.

Q. And he was a candidate for Senator against Banks, was he not? A. No, sir.

Q. Don't you know that? A. On the ticket?

Q. Yes. A. Or the convention?

Q. Yes. A. Yes; I heard that in the convention he was a candidate.

Q. This former Republican member of the Assembly, and this candidate for nomination for State Senator against Banks, was the gentleman employed by you— A. [Interrupting.] I did not employ him. Hussey gave his services gratis.

Q. He and yourself were the ones to watch? A. We were the watchers.

Q. How much did you pay each man? A. I paid them \$5.

Q. Then you paid out exactly \$30? A. I paid out exactly \$30.

Q. How much money did you use on election day in that precinct? A. Not any more money.

Q. Not a dollar? A. I spent a dollar or so for my meals and one thing and another, and cigarettes and cigars.

Q. Meals and cigarettes was the extent of your dissipation on that day? A. Yes, sir.

Q. You didn't take any beer? A. I don't drink beer.

Q. You don't drink? A. No, sir; I don't drink at all. I don't use liquor in any form.

Q. Did you ever take a drink in your life? A. I have; yes, sir.

Q. You did not spend any money to treat anybody on that day, then? A. I may have, but I don't know—no, I don't recollect treating anybody on that day. I was in the barroom several times, but I don't recollect treating anybody.

Q. The barroom there was open? A. No; it was a little bar in the back.

Q. A little bar in the back, where you had access? A. Well, anybody could get in there.

Q. Were you in charge of one precinct only, or several? A. One.

Q. You didn't go around to any of the others during the day? A. I was in the Fourth Precinct once during the day.

Q. Only in the Fourth? A. Yes, sir; that was only across the street.

Q. Were you there when the polls closed in the Fourth Precinct? A. No, sir; I was in the Third Precinct.

Q. Do you know a gentleman by the name of Riley, a member of the Fire Department? A. Yes, sir.

Q. Did you remove a Clerk by the name of Alvey during the count there? A. No, sir.

Q. C. W. Alvey? A. No, sir.

Q. Wasn't there a Clerk by the name of C. W. Alvey in the Third Precinct? A. He served all through the Board—all through the count.

Q. Did he keep a tally all during the count? A. No, sir.

Q. Who kept it? A. There was a mistake about the appointment. There were two Judges or two Clerks appointed, I don't know which, one named Riley and the other named Alvey. One was Judge, but both of their warrants called for a clerkship, and Alvey was not competent to act as Clerk, and I think Alvey acted as a Judge and Riley acted as a Clerk. Both of their appointments called for a clerkship; and there was one Clerk more than should be in the Board and one Judge less than should be.

Q. I understand. Riley was a Democrat, wasn't he? A. Riley was not the Riley of the Fire Department; he is a man that lives on Stockton Street and no relative of the Riley of the Fire Department.

Q. And in no way connected with him? A. No, sir; not in any way connected with him.

Q. And you are positive he is not a relative? A. I am positive of that. I think he is a bookbinder.

Q. Do you know that the Riley who was in the Fire Department was around there during the count? A. Yes, sir.

Q. How do you know he is no relation to the other Riley? A. I know he is not.

Q. And you are personally acquainted with both of them? A. Yes; and I know his father and every member of his family. I believe their names are spelled different.

Q. You are positive that that is all the money you used on election day? A. Yes, sir; that is all the money I recollect using, was \$30.

Q. Where was that money furnished you from? A. It was given to me by my brother. He received it from the County Committee, and gave it to me.

THOMAS J. L. SMILEY.

A witness on behalf of contestant, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Mr. Smiley, you are the Registrar of this city and county, I believe? Answer—Yes, sir.

Q. And as such you have in your custody the records of the Board of Election Commissioners? A. Yes, sir.

Q. Have you the records of the Board of Election Commissioners, or the official vote of the Thirty-third Assembly District? A. Yes, sir.

Q. Please give me the vote for the Electors of that district. I want you to give me the vote for Electors first. Give us the highest and the lowest for each—the Democratic and Republican? A. The First of the Thirty-third, all the Republican candidates received eighty-eight.

Q. They all received eighty-eight? A. Yes, sir.

Q. For Electors? A. Yes, sir.

Q. What did the Democrats receive? A. One hundred and sixty-five, all.

Q. What was scattering? A. Nothing.

Q. Now turn to the Senatorial vote. A. The First of the Thirty-third, Banks received seventy-nine, and Sullivan received one hundred and sixty-four.

Q. What was the scattering vote there? A. Nothing.

Q. Take the Second Precinct. A. In the Second, the Republican candidates received one hundred and five, with the exception of one, who received one hundred and three.

Q. Now, the Democratic? A. Four of them received one hundred and eighty-nine, and one received one hundred and eighty-eight.

Q. That is the Third Precinct? A. No, sir; the Second.

Q. I want the Third Precinct, now. A. In the Third, one of the Presidential candidates received one hundred and thirty-four; two of them received one hundred and thirty-four; four of them received one hundred and thirty-three, and one received one hundred and thirty-two.

Q. That is, the Republicans? A. Yes, sir.

Q. Now give us the Democrats? A. The Democrats, six received one hundred and sixty-one, and two of them received one hundred and sixty.

Q. Now give me the Senatorial vote there. A. Of the Third Precinct?

Q. Of the Third; yes, sir. A. Banks received one hundred and twenty-six, and Sullivan received one hundred and fifty-eight.

Q. Now, the scattering vote for Senator. A. The scattering there was one vote for Senator.

Q. Now, give me the Fourth Precinct. A. Presidential of the Third, there were seven scattering; one each for Mr. Pixley, Mr. Lyon, Mr. Duncan, Mr. Inman, Mr. Garnet—one for each.

Q. Give me the Republican and Democratic. A. In which precinct?

Q. In the Fourth Precinct. A. In the Fourth Precinct, the three Republican Electors received one hundred and forty-six, and five received one hundred and forty-five.

Q. Now, the Democratic. A. Five received one hundred and fifty-six, two received one hundred and fifty-five, and one one hundred and fifty-four, and no scattering.

Q. Now, the Senatorial. A. The Fourth of the Thirty-third. Banks received one hundred and forty-one; Sullivan received one hundred and fifty-four; scattering, none.

Q. No scattering at all in that precinct? A. No, sir.

Q. Now, give me the Fifth of the Thirty-third. A. The Presidential?

Q. Yes, sir. A. The Fifth of the Thirty-third, one of the Republicans received one hundred and eighty-seven, one received one hundred and eighty-six, five received one hundred and eighty-five, and one one hundred and eighty-four. Of the Democrats, seven received one hundred and eighty-seven, and one received one hundred and eighty-six.

Q. Now, the Senatorial vote. A. Banks received one hundred and ninety-six; Sullivan received one hundred and seventy-one; and scattering, two.

Q. Now, the Sixth. A. In the Sixth, seven Republican Electors received one hundred and thirty each, and one received one hundred and thirty-two. Of the Democrats, seven received one hundred and sixty-two, and one received one hundred and sixty-one.

Q. Now, the Senatorial. A. Banks received one hundred and thirty-nine, and Sullivan received one hundred and forty.

Q. What is scattering? A. Six.

Q. Does it show who those six votes were counted for, or simply scattering? A. Just scattering.

Q. Now give me the Seventh Precinct. A. Seven Republicans received one hundred and seventy, and one received one hundred and seventy-one.

Q. Now the Democratic. A. Seven received one hundred and thirty-three, and one received one hundred and thirty-two; scattering, three.

Q. Give us the Senatorial of the Seventh. A. Banks received one hundred and eighty-one, Sullivan one hundred and fifteen, scattering five.

Q. Now give me the Eighth Precinct. A. Presidential?

Q. Yes, sir. A. Seven Republicans received one hundred and ninety and one received one hundred and eighty-nine.

Q. Now the Democratic. A. Of the Democratic, seven received ninety-two and one received ninety-one, and seven scattering.

Q. Now give me the Senatorial of the Eighth Precinct. A. Banks received one hundred and ninety-one, and Sullivan received seventy-four.

Q. What is the scattering? A. Seventeen scattering.

Q. Does it show who those scattering were for? A. No, sir; it don't show.

Q. Now turn to the Fourth Precinct of the Thirty-fourth District. A. The Fourth on the Presidential?

Q. Yes, sir; just the same as you have been giving it. A. One Republican received one hundred and thirty-one, two received one hundred and thirty, four received one hundred and twenty-nine, and one received one hundred and twenty-eight.

Q. Now the Democrats. A. Five received one hundred and forty-three, one received one hundred and forty-two, and two received one hundred and forty-one.

Q. Now the Senatorial. A. The Fourth of the Thirty-fourth?

Q. Yes, sir. A. Banks received one hundred and forty-one, Sullivan one hundred and twenty-four, scattering one.

Q. There is only one scattering? A. Yes, sir.

Q. Give us the Fifth Precinct now. A. The Fifth of the Thirty-fourth, four of the Republicans one hundred and thirty-three, three received one hundred and thirty-two, and one received one hundred and thirty-one. The Democrats all received one hundred and nineteen, and one scattering.

Q. What is the Sullivan and Banks vote there? A. Banks received one hundred and thirty-eight, Sullivan received one hundred and five, and scattering, three.

Q. Now give us the Sixth Precinct. A. Of the Presidential, one Republican received one hundred and forty-one, and seven received one hundred and forty. Democratic, seven received one hundred and forty-eight, and one received one hundred and forty-seven; scattering, one.

Q. Now the Senatorial. A. The Sixth Senatorial, Banks received one hundred and sixty-six, and Sullivan received one hundred and fifteen; scattering, seven.

Q. Now give us the Seventh Precinct of the Thirty-fourth District. A. Seven of the Republicans received one hundred and forty-three, and one received one hundred and forty-two. Of the Democrats, six received ninety-nine, and two received ninety-eight; scattering, one.

Q. What is the Senatorial vote in that Seventh Precinct? A. Banks received one hundred and sixty; Sullivan received eighty; scattering, three.

Q. Give us the vote in the Third Precinct in the Thirty-fourth Assembly District. A. Of the Presidential Electors, five Republicans received one hundred and fifty-two, and three received one hundred and fifty-one. Of the Democrats, seven received one hundred and sixty-seven, and one received one hundred and sixty-six; four and three scattering. Banks received one hundred and forty-one, and Sullivan received one hundred and sixty-eight.

Q. Give us the total vote for Senator in that Senatorial District—that is, in the two Assembly Districts, the vote for Senator. A. There were two thousand three hundred and three votes for Banks, and two thousand two hundred and thirty for Sullivan.

Q. What is the scattering? A. The sum total of the scattering is fifty-five.

Q. That makes a total of how many? A. Four thousand seven hundred and forty-one.

Q. Have you the Presidential vote in those two districts, so you can give it to me? A. No, sir.

Q. Have you any way of telling, by your returns, how many ballots were voted in the Twenty-first Senatorial District that did not properly belong in that district? A. No, sir; they come under the scattering.

Q. That is mostly what the scattering is composed of? A. I imagine so, sir.

Q. Did you put down any scattering in the Third Precinct of the Thirty-fourth District? A. Only four.

Q. What was scattering for Senator? A. In the Fourth of the Thirty-fourth the scattering was one; in the Third of the Thirty-fourth the scattering was two.

Q. And that is all that appears there? A. That is all.

Q. And you cannot account for the discrepancy between the Presidential electors' vote and the Senatorial vote? A. I don't know that there is any discrepancy.

Q. There is a discrepancy. But you cannot account for that? A. No, sir. There were three hundred and twenty-six cast.

MR. CLUNIE: Will you admit that Mr. Banks has received his certificate?

MR. DORN: There is no question about that. We admit that he has received a certificate of election from the Registrar.

Cross Interrogatories

By MR. DORN: Please give us the rest of the precincts which Mr. Clunie skipped. The Second Precinct of the Thirty-third Assembly District he skipped, A. The Second Precinct of the Thirty-third District, the Republican Electors, seven of them received one hundred and five and one received one hundred and three. Of the Democratic Electors, five received one hundred and eighty-nine, one received one hundred and eighty-eight, one received one hundred and ninety, and one received one hundred and ninety-one. No scattering.

Q. Give us the vote for Senator. A. In the Second Precinct of the Thirty-third District, Banks received eighty-six, and Sullivan received one hundred and ninety-six. No scattering.

Q. Have you any means of knowing or accounting for the discrepancy between the vote for Senator in that precinct, in which it appears that the Republican Electors received one hundred and five and Banks received nineteen less? Have you any information which will account for that discrepancy? A. No, sir; I have no means of knowing.

Q. Have you any means of accounting for the fact that Mr. Sullivan in that precinct received some eight or ten votes in excess of the Democratic Presidential Electors? A. No, sir.

Q. You have no more information on that precinct than you have on any other? A. No, sir.

Q. And you have no means of accounting for the discrepancies in favor of Banks and against Sullivan than you have in favor of discrepancies in favor of Sullivan and against Banks? A. No, sir.

Q. Give us the First Precinct of the Thirty-fourth District? A. Seven Republicans received one hundred and thirty-seven and one received one hundred and thirty-six. Of the Democrats, all received one hundred and forty-eight, and no scattering.

Q. What was the vote for Senator in that precinct? A. One hundred and thirty for Banks and one hundred and forty-seven for Sullivan.

Q. What is the scattering? A. None.

Q. You have no means for accounting for Banks' discrepancy in the vote in that place? A. No, sir.

Q. Give us the Second Precinct of the Thirty-fourth District. A. The Republican candidates received one hundred and twenty-nine each, seven of the Democrats received one hundred and eighty-four, and one one hundred and eighty-four.

Q. Give us the Senatorial vote. A. One hundred and thirteen for Banks and one hundred and ninety-five for Sullivan; no scattering.

Q. Have you any means in the world for accounting for the fact that Banks runs behind the Republican Electors ten or fifteen votes, and Sullivan runs ahead in that precinct? A. No, sir.

Q. Then taking the whole district through, one precinct after another, as appears from your returns in your possession, in some of the precincts Banks' vote is less than the Republican Electors, and in some it is in advance; and in some of the precincts Sullivan's vote is less than that of the Democratic Electors, and in some it is largely in excess? A. It appears to be so, sir.

Q. Isn't that shown by the record you hold in your hand? A. I didn't carry it through in my head regularly, but it attracted my attention as it went along; that was about the result.

Q. The Eighth Precinct of the Thirty-third Assembly District, have there not been eleven Republican votes, which were rejected by the Board

of Election, counted in two Courts where different election contests have been going on? A. I have no means of knowing.

MR. DORN: If your honors please, this is the most auspicious occasion that I know of to repeat the proposition which I made before, the Registrar being here now, and all the parties being present; and on behalf of the respondent, Mr. Banks, we offer to come into this Court, and before your honors count the ballots cast for the office of Senator in the Twenty-first Senatorial District in the last election, and to abide by the result of those ballots.

MR. CLUNIE: How do your honors feel about counting the ballots?

JUSTICE STAFFORD: We have no ruling to make on that.

MR. DORN: I presume if the ballots are here your honors will take evidence on that as on any other subject.

MR. CLUNIE: As I stated yesterday, we made this offer to Mr. Banks, and he declined.

JUSTICE STAFFORD: If both parties will agree, and the Registrar will produce the ballots, I don't know how we can refuse to count them.

MR. DORN: Upon producing the subpoena for those ballots, will you produce those ballots in Court, to be counted, Mr. Smiley? A. Those ballots are sealed—on the recounts which have progressed—have been resealed and placed in the custody of the Registrar, who was then Mr. Prindle. The Board of Election Commissioners voted that Mr. Prindle and one of the Election Commissioners, Mr. Strother, should see that they were placed in the vault and be properly sealed and properly watched, and that Mr. Strother was to hold one key of the vault, and the Registrar was to hold the other, all of which has been done. Mr. Strother cannot obtain admission to that vault without my presence, and I cannot obtain admission to the vault without Mr. Strother's presence. From conversations I have had with Mr. Strother with regard to the matter, I don't think there will be any difficulty in producing the matter on summons.

By MR. CLUNIE: Do you say these ballots have been all sealed up by the Judges? A. Yes, sir.

Q. Would you undertake to open the ballots? A. Yes, sir.

Q. And break the seal of the ballots? A. Yes, sir; if the Judges told me to do it.

Q. And count them again? A. Yes, sir; and seal them up again.

MR. DORN: Will you accept the proposition, Mr. Clunie?

MR. CLUNIE: I am not going to say anything.

JUSTICE STAFFORD: Two years ago there were two or three of these contests, and the then Registrar, Mr. Walsh, refused to produce the ballots, or to open them, and it was conceded that we had no right to order the Registrar to produce the ballots. If the Registrar, without any subpoena from us, will produce the ballots, and will open them, very well. We have no objection.

By MR. CLUNIE: Do I understand that without the subpoena you are willing to bring those ballots into Court and break open those packages? A. I have not said so.

MR. DORN: Will your honors not give me any subpoena for the Registrar, and for him to produce the ballots?

JUSTICE STAFFORD: We will not order him to open the packages.

MR. DORN: Are you willing now to have them counted, Mr. Clunie?

MR. CLUNIE: Yes, sir; and I have always been.

MR. DORN: I ask that the reporter note that stipulation.

MR. CLUNIE: I object to the reporter noting anything of the kind.

MR. DORN: I ask that the reporter note his refusal to enter into the agreement.

MR. CLUNIE: I object to the reporter noting anything of the kind.

WILLIAM J. SULLIVAN.

A witness on behalf of contestant, sworn and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: What is your full name, Mr. Sullivan? Answer—William John Sullivan.

Q. Where do you live? A. I lived until a few weeks ago at 2510 Leavenworth Street.

Q. How long did you live there? A. I have lived there ever since I came back from sea, six months ago.

Q. Did you live there at the time of election? A. Yes, sir.

Q. Where were you on election day? A. In the Second of Thirty-fourth.

Q. That was your place; in the Second of Thirty-fourth? A. Yes, sir.

Q. Prior to the time of your voting was there any proposition made by any person to give you money for voting for Mr. Banks for Senator from the Twenty-first Senatorial District? A. There was on the morning of election, about two hours before I voted. There was a man came to me and offered me \$5, provided I voted for Mr. Banks.

Q. That was in the Second of Thirty-fourth? A. Yes, sir.

Cross Interrogatories.

By MR. DORN: You did not accept his proposition? A. No, sir.

Q. What is the name you generally go by around town? A. They call me "Yankee" sometimes.

Q. They call you Yankee Sullivan. Where did you get that name? A. I couldn't tell you where I got it.

Q. That is the name by which you are known around town? A. Not by everybody. There are only a few call me that.

Q. You don't know who the man was that made this proposition, do you?

A. No, sir; I don't know his name. I know him when I see him, but I don't know his name, and I never saw him before.

Q. Have you ever told anybody about that occurrence until to-day? A. I told Mr. Callihan.

Q. When did you tell Mr. Callihan? A. I told him on the day of election, before I voted.

Q. He was a Democratic Captain of Election over there on that day, wasn't he? A. I believe he was.

Q. How much did Mr. Callihan give you for voting for Mr. Sullivan? A. He didn't give me anything. I received no money from anybody at all.

Q. What was you promised? A. Promised nothing.

Q. You have been talking about your testimony here in the last few days, haven't you? A. No; I haven't said nothing.

Q. Have you spoken to anybody at all about it? A. No, sir.

Q. You have not said a word about it? A. No; Callihan asked me once if I was going up to testify, and I told him yes, I would testify to

what I told him on the day of election, because he asked me. I did not know I was to testify until the other day. He asked me if I remembered it.

Q. Haven't you within the last three days stated to a friend of yours, in this city and county, that you were going up here to testify in this case in the manner you have now testified, and that you were going to get \$10 for it? A. No, sir.

Q. Wait a moment; and that if he would go with you and give similar testimony that he would be paid the same amount? A. No, sir.

Q. You swear positively to that, do you? A. I swear positively.

Q. You have made no statement that you were to get anything for your testimony here? A. No, sir. I never expect to get anything, either.

Q. You swear you have never said that to anybody? A. No, sir.

Q. And you never said you were going to get \$10 for your testimony? A. No, sir.

Q. And you don't expect to get it? A. No, sir; and I was never promised anything.

Q. Do you know Mr. Riley of the North End Club? A. Yes, sir.

Q. Do you know Mr. Fay? A. Yes, sir.

Q. How long have you known Mr. Riley and Mr. Fay? A. I guess about fifteen years; maybe sixteen years.

Q. Do you belong to the North End Social Club? A. I am not a member of it, but I have got the privilege of going there.

Q. You are on friendly terms with them, are you? A. Yes, sir.

Q. Do you know whether they have a large picture frame there which was presented by Mr. Morrow? A. I don't know who it was presented by, but I know they have got a large picture frame there.

Q. About how many pictures are there in it? A. There is none in it at present. All of them haven't got their pictures taken.

Q. They are having their pictures taken? A. They might be through, but they were getting them taken.

CHARLES SMITH.

A witness on behalf of contestant, sworn and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Mr. Smith, where do you reside? Answer—At the present time I reside in Berkeley.

Q. Where did you live shortly before the election? A. No. 1236 Broadway.

Q. How long did you live there? A. Two years.

Q. That was in the Twenty-first Senatorial District?

Q. Do you know that man standing up there [indicating F. R. Conway]? A. Yes, sir.

Q. Did he ever pay you \$5 for room rent there? A. No, sir.

Q. He swore on the stand that he did. Then he is mistaken, is he? A. Yes, sir.

Q. Did you ever give him a receipt for that? A. No, sir.

Q. He is mistaken, is he? A. Yes, sir.

Q. He swore on the stand that you said Johnnie Sullivan had given you \$40 for work you had done for him. Is that true or false? A. That is false.

Q. Did you ever receive any money from Mr. Sullivan for what you did? A. No, sir.

Q. This is the man that I refer to as Mr. Conway [indicating]. That is all.

Cross Interrogatories.

By Mr. DORN: How did you come to get people registered from your house that didn't pay rent to you? A. The man wanted to come over there to vote.

Q. What did he want to come over there for? A. He came to vote, I suppose.

Q. Are you in the habit of giving receipts to people who do not pay you money? A. No; not very often.

Q. How long have you known Mr. Conway? A. I suppose about a year and a half or two years.

Q. Are you an intimate friend of his? A. I always have been.

Q. And you gave him a receipt for money that he never paid? A. Who got the receipt?

Q. I don't know who got it. You signed the receipt, did you? A. I signed the receipt.

Q. You signed the receipt and never got a dollar for it? A. I never got a dollar.

Q. And you sent that receipt out with your signature on it knowing it was false, and that it was not true; namely, that you got \$5? A. I don't understand you.

Q. The receipt says you got \$5. And you signed the receipt knowing the statement was false, did you? A. I never got any \$5.

Q. You knew at the time you were signing a falsehood? A. I got nothing at all.

Q. You got the \$5? A. No, sir; I did not.

Q. And you signed a receipt for \$5? A. Yes, sir.

Q. And you signed that which was false? A. I suppose so.

Q. What? A. According to that I got no \$5.

Q. Then you signed what was false? A. The receipt is true enough, yes; the man wrote it and I signed it.

Q. The receipt was true, was it? A. It was true, far enough, yes.

Q. The receipt was true, was it? A. The receipt can't be true if I didn't get \$5.

Q. Do you swear that the receipt recited a falsehood? The receipt says you received from him \$5. That was not true, was it? A. No, it was not.

Q. And you put your name on to it? A. That is all right.

Q. And you sent a lie out into the community, with your name signed to it, did you? A. I don't think it went into the community at all. I think it went into the man's pocket.

Q. Then you sent a lie into his pocket with your named signed to it? A. I guess that is about the size of it.

Q. How many more men were registered from your house on election day? A. Two more.

Q. What are there names? A. Simpson and Williams.

Q. Do you know what their politics were? A. No; I do not.

Q. Do you know what Simpson's politics were? A. Republican, I think.

Q. Don't you know perfectly well that he was a Democrat and actively engaged making a canvass for a Democrat? A. No.

Q. What were Williams' politics? A. Republican.

Q. I suppose you are Republican, are you not? A. No, sir; I am a Democrat.

Q. Don't you know, as a matter of fact, that Williams was a Democrat and that he was engaged in making Reynolds' fight for the Assembly there? A. No, sir; I know nothing at all about it.

Q. You don't know anything about it? A. No.

Q. Did these other men pay rent to you? A. One of them did.

Q. Which one? A. Williams.

Q. Williams paid you rent, did he? A. Yes, sir.

Q. Did Simpson pay you anything? A. No, sir.

Q. You gave him a receipt, did you? A. Yes, sir.

Q. And you sent out another lie with your name signed to it? A. Yes, sir.

Q. How much did Mr. Williams pay you? A. \$5.

Q. He paid you \$5? A. Yes, sir.

Q. Did you get a receipt for it? A. Yes, sir.

Q. I thought probably it would be in accordance with your practice to refuse to give a receipt if you got \$5.

MR. CLUNIE: I submit that Mr. Dorn has no right to say that and insult the witness.

By MR. DORN: What were you doing on election day?

MR. CLUNIE (to witness): I want to tell you that you need not answer insulting or impertinent questions from Mr. Dorn—under the Code—and I would ask your honors to instruct him that he has a right to be protected from insulting and impertinent questions.

JUSTICE STAFFORD: We did not hear it.

By MR. DORN: What were you doing on election day? A. It is hard to tell. I was buggy riding part of the day.

Q. Whose buggy were you riding in? A. That is a very hard question for me to answer.

Q. You don't know? A. I don't know.

Q. As a matter of fact you got in the buggy, and you don't know whose buggy it was? A. That is about the size of it.

Q. You did not ask, as long as you got a ride? A. That is about the size of it.

Q. You didn't pay for the buggy, did you? A. No, sir.

Q. Did you pay for the drinks you had around town while you were riding? A. I think I did.

Q. You paid for all of them, did you? A. Yes, sir.

Q. You did not get treated all day? A. To the best of my recollection, no.

Q. You were not out riding with a lady, were you? A. No, sir.

Q. Were you alone in the buggy? A. I was part of the time.

Q. About how much of the time? A. Well, it is a long time ago.

Q. About how many people did you ride with during the day? A. Two or three.

Q. You were driving a buggy, were you? A. I was part of the time, and part of the time I was not.

Q. As a matter of fact, don't you know who hired that buggy? A. I know where the money came from to hire that buggy.

Q. Who did? A. Mr. Barry.

Q. Who is Mr. Barry? A. You will have to inquire; I couldn't tell you.

Q. Michael Barry, isn't it? A. I think that is his first name.

Q. He is the same Michael Barry who was a member of the Assembly two years ago, isn't he? A. I think he is.

Q. He was at that time very actively engaged in Democratic politics, was he not—this Mr. Barry? A. I couldn't tell you.

Q. Don't you know as a matter of fact he was engaged making the fight for Mr. Sullivan there? A. I couldn't tell you about it.

Q. For the last two or three days preliminary to election? A. I don't think I saw him for two or three days before election.

Q. How did he happen to take you out in the buggy on election day? A. He happened to drop down at the polls, and asked me if I wanted to take a ride.

Q. This was election day? A. Yes, sir.

Q. Election day he came and asked you if you wanted to take a ride? A. Yes, sir.

Q. What banner was on his buggy that you went to take that ride in—or on the horse? A. It was a friend of mine running for the Senate.

Q. Who was the friend? A. J. J. Sullivan.

Q. "J. J. Sullivan, for Senator," was printed in great big letters? A. I didn't say great big letters at all.

Q. Well, small letters? A. Now you have got about the size of it.

Q. About what size? A. I couldn't tell what size.

Q. Were they as big as the letters on this transcript here? A. They may have been large or small letters; I couldn't say.

Q. Just look at that transcript. You say the name John J. Sullivan for Senator was on a banner on the horse. Will you swear the letters were as large as that? A. I couldn't swear.

Q. About what size? A. I couldn't tell you, because I never measured.

Q. Weren't they large letters? A. I don't suppose they were larger than anybody's else.

Q. They were letters which could be easily read across the street, weren't they? A. I guess so.

Q. That was the buggy you went riding in, was it? A. I put the banner on there myself, sir.

Q. When did you put the banner on there? A. I guess about ten or eleven o'clock election morning.

Q. Where did you get the banner to put it on? A. From Con Ryan.

Q. You got the banner from Con Ryan's? A. Yes, sir.

Q. And then put the banner on the horse, before Barry asked you to take a ride with him? A. That was after I had the team. I couldn't very well put it on the horse if I didn't have it.

Q. When Barry asked you to take a ride with him there was no such banner on the horse? A. I didn't say Mr. Barry asked me to take a ride with him at all.

Q. Didn't you say Mr. Barry got a buggy down there, and asked if you would like to take a ride? A. You asked me where I got the buggy.

Q. Where did you get it? A. Out of the livery stable.

Q. Didn't you state a little while ago that where you got the buggy was Barry came to you on election day, and asked if you would like to take a ride? A. Yes, sir; that is what I said.

Q. And that is where you got the buggy? A. Yes, sir; that is where I got the buggy.

Q. Did he go and get the buggy then, or did you get the buggy? A. The buggy was sent for.

Q. Who sent for it? A. Mr. Barry.

Q. Who did he send for it? A. I couldn't tell you.

- Q. Did you wait until he got the buggy? A. Yes, sir.
- Q. And at that time there was no banner on the horse when it came?
- A. No, sir.
- Q. Then you took the buggy, did you, or did Barry? A. I took it.
- Q. Where did you get it? A. I couldn't tell.
- Q. Did you go straight to Con Ryan's to get the banner? A. I think I did.
- Q. How many banners did you put on the horse—one on each side? A. I couldn't tell you now.
- Q. To the best of your knowledge you put one on each side? A. To the best of my knowledge I think there was only one on.
- Q. That one had lettering only on one side, didn't it? A. I don't know.
- Q. You took your ride, did you? A. Yes, sir.
- Q. After you got your horse and buggy and banner fixed up, where did you go? A. I think I took a ride out as far as Fillmore and Post.
- Q. Who did you take in with you when you got out there? A. I don't recollect who it was now.
- Q. Can't you call his name? A. No, sir.
- Q. Where did you take him to? A. I took a ride out there.
- Q. You brought him back, then, did you? A. Yes, sir.
- Q. Where did you bring him back to? A. I can't say positively.
- Q. Why did you go outside the Twenty-first Senatorial District with that banner on your horse? You went out and got a man and brought him back, didn't you? A. I did nothing of the kind.
- Q. What did you do? A. I told you I went out for a buggy ride.
- Q. Where did you go to? A. I told you Post and Fillmore.
- Q. When you got to Post and Fillmore, did you turn right around? A. I came right back.
- Q. You turned in the middle of the street? A. Yes, sir.
- Q. Did you go straight back? A. I may have stopped somewhere.
- Q. Who went with you on that ride? A. I couldn't positively say who it was.
- Q. Did anybody go with you? A. Yes, sir.
- Q. You don't know who it was? A. I couldn't tell you.
- Q. Did anybody come back with you? A. Yes, sir; I couldn't tell you.
- Q. Did the same man come back with you? A. I couldn't tell you; I have a very poor memory.
- Q. When you got back into the Twenty-first Senatorial District, what did you do? A. I guess we went in the corner and had a drink.
- Q. What corner was that? A. It must have been Wendt's corner; that is about the only corner I know.
- Q. Who paid for the drinks? A. I paid for it myself.
- Q. Where did you get the money from? A. I work for a living, sir.
- Q. That is not the question. A. Well, I don't steal.
- Q. Where did you get the money from that you were spending around over the district on election day? A. My own money I work hard for.
- Q. You did not get a cent of it from anybody else? A. No, sir.
- Q. How much of your money that you spent on election day has been paid back to you? A. Not a dollar.
- Q. How much is owing to you now? A. Not a dollar.
- Q. Who paid for this buggy? A. Mr. Barry.
- Q. What was Barry doing around during the day in the district there?
- A. I couldn't tell you; I only saw him once, for about twenty minutes.
- Q. At the time he got the buggy? A. Yes, sir.

- Q. What instructions did he give you when he got that buggy for you?
A. None, sir.
- Q. None at all? A. No, sir.
- Q. He told you to take this buggy and put Sullivan's banner on it and go and take a ride? A. He did not tell me to put anybody's banner on it.
- Q. He just told you to come and take a ride? A. Yes, sir.
- Q. That is all? A. Yes, sir.
- Q. Simply, "If you want to take a ride, take this buggy and get a ride?"
A. That is all.
- Q. And a henchman rushed off and got the buggy, and you went and took a ride? A. He did not.
- Q. Why did you put the banner on afterwards? A. Because it did not suit me that way.
- Q. Why didn't it suit you that way? What did you want with Mr. Sullivan's banner on that horse? A. It didn't suit me. It suited me and I put it on.
- Q. Why did you put Sullivan's name on the banner that day? A. Because he was a friend of mine, and I was doing all I possibly could to send him to the Senate.
- Q. Awhile ago, on your direct examination, when you were asked if you took any part in the Senatorial fight, you said no, you did not, didn't you?
A. I have not been asked any such question.
- Q. And if you did state awhile ago in your direct examination that you took no active part in the Senatorial fight, you stated what was not true, did you? A. I made no such statement.
- Q. If you did make any such statement it would be untrue, would it?
A. I made no such statement.
- Q. If you did make any such statement it would be untrue, would it, I say? A. Yes, sir; it would.
- Q. And you did take an active part in working for Mr. Sullivan for the Senate? A. I did, as far as my own vote went; that is all.
- Q. What were you galavanting up and down that hill with a buggy for?
A. Just to take a ride.
- Q. As a matter of fact, wasn't it to bring the people to the polls? A. No, sir.
- Q. And weren't you sent for by Mr. Barry to bring people to the polls?
A. No, sir.
- Q. To vote? A. No, sir.
- Q. Who rode around with you? A. I couldn't tell you.
- Q. What were they riding with you for? A. I don't know; pleasure.
- Q. And you don't know your object in taking a ride? You don't know what you were riding for, except that you were riding? That is all? A. That is about all.
- Q. In fact your memory is not very good. It is very poor, is it? A. Well!
- Q. Do you know a gentleman by the name of John Magner over there in that district? A. I did about twelve years ago; I haven't seen him, though, lately.
- Q. You did not see him on election day? A. I don't think I did.
- Q. Didn't you, as a matter of fact, see him on election day? A. I won't swear positively, but I don't think I did.
- Q. But your memory is not good, and you don't know that you did see him? A. I don't think I did.
- Q. With all your riding around in that district with your banner on your horse, you say you did not see John Magner on that day? A. I don't think I did.

Q. About how much money did you spend on election day? A. I never kept any account of it.

Q. About \$50? A. No.

Q. It may have been \$50 or \$100, or more or less? A. It may have been more or less.

Q. You have no means of remembering? A. No, sir.

Q. You kept no account? A. No.

Q. And you don't know what you used it for? You were simply using it to influence and assist your friend, John J. Sullivan, to get to the Senate, was it? A. That is not what I said.

Q. That is what you were putting it in at? A. Driving around.

Q. You knew at the time you gave this receipt to Conway, that he was a Republican, didn't you? A. Yes, sir.

Q. You knew at the time you gave the receipt to Williams that he was a Republican, didn't you? A. Yes, sir.

Q. And you knew at the time you gave the receipt to Simpson that he was a Republican, didn't you? A. Yes, sir.

Q. And you were very anxious and solicitous for the election of your friend, John J. Sullivan, to the Senate at the same time, were you? A. I didn't put it that way at all.

Q. You were, were you not? A. How is it.

Q. You made up your mind to allow three Republicans to register from your house and never pay a dollar rent, and you sent out a false receipt in order that they might vote against John J. Sullivan? A. I said one man got his receipt and paid his money.

Q. And the other did not? A. No.

Q. And you, a friend of John J. Sullivan, driving around with a buggy all day with John Sullivan's banner on all day, and you had sent out false receipts with your name signed to them; do you consider that friendship with John J. Sullivan? A. Consider what?

Q. Do you consider that kind of action friendship to John J. Sullivan? A. I don't know what you mean.

By MR. CLUNIE: Whatever you spent, it was your money? A. Yes, sir.

Q. And you thought you had a right to spend it without asking Mr. Dorn about it? A. Yes, sir.

By MR. DORN: You were talking with Mr. Clunie out in the hall a few moments ago, weren't you? A. No.

Q. You were talking to Mr. Maxwell then? A. No.

Q. Or with Williams? A. No.

Q. You have not talked with any of them? A. No.

Q. You don't know any of them? A. No, sir.

Q. You are not acquainted with any of them? A. No, sir.

Q. You don't know Williams? A. No.

Q. You are not acquainted with Mr. Maxwell [here indicating William Maxwell]? A. Where is the gentleman?

Q. You are not acquainted with this gentleman [now indicating William Maxwell]? A. No, sir.

Q. You don't know Mr. Clunie?

MR. CLUNIE: I have met the gentleman.

By MR. DORN: Where did you meet Mr. Clunie a few minutes ago? A. In the Court-room.

Q. You had a talk with him, didn't you? A. Certainly. He said, "How do you do; your name is Smith," and I said, "Yes, sir."

Q. Is that all? A. Yes, sir.

Q. He did not ask you what you were going to testify to, did he? A. No, sir.

Q. He simply said your name is Smith? A. He asked me what I came up here to testify; that was all.

Q. What did you tell him? A. I told him that I was sent for to come up here to testify.

Q. Who sent for you? A. I don't know that.

Q. Who subpoenaed you? A. I don't know that.

Q. And you say you don't know Williams? A. What Williams have you reference to?

Q. I ask about the man that roomed in your house? A. Why didn't you say? Certainly I knew that man.

Q. You are acquainted with him? A. Yes, sir. There are about a dozen Williams.

Q. He is the only lodger who paid you rent? A. He paid his rent, yes, sir.

Q. What kind of a lodging house do you think you were running over there?

MR. CLUNIE: That is not a fair question, I submit.

By MR. DORN: How long have you known this Williams? A. I should judge about two years.

Q. You have known him during all the last year, then? A. Yes, sir.

Q. Do you know if he is at work anywhere? A. I don't think he is working.

Q. Do you know if he has worked anywhere during the last six or eight months, or a year? A. Yes, sir.

Q. Where? A. He has worked for me.

Q. When? A. Since last night.

Q. What? A. Since last night. Last night he took the job.

Q. How long ago was it that he commenced to work for you? A. I guess it was about last Wednesday.

Q. What is he doing? A. Laboring.

Q. Up to the time he commenced to work for you, do you know if he worked anywhere? Do you know of his working anywhere for the six months preceding election? A. I never kept track of him.

Q. As a matter of fact, don't you know he has not done a day's work for six months preceding election? A. I couldn't tell you anything about it.

Q. When did he pay you for this room? A. If you can jog my memory as to the time of the big fire down here, I can tell you.

Q. I cannot do that. A. Well, I cannot tell you.

Q. When did he pay you that five dollars? A. Just after the fire.

Q. Then you state that you don't know whether he did any work for six months? A. That is what I said.

Q. But you do say, and all you know, is that just after the big fire he paid you five dollars? A. He paid me some money just after the fire; somewhere, a few days.

[Contestant rests.]

MR. CLUNIE: When will your honors meet again?

JUSTICE STAFFORD: On Monday.

MR. CLUNIE: I want to ask your honors to transmit my testimony to the Senate as soon as the witnesses have all signed. The law provides that it must be transmitted to the Senate on the second day of the session. My testimony or depositions have closed, and they can go up, and I have no further objection to their depositions being taken.

JUSTICE STAFFORD: We both agree upon the propositions that the depositions will not be forwarded until they are completed.

MR. CLUNIE: I want to note an exception to that ruling, and I will apply to the Legislature to have it sent up.

JUSTICE STAFFORD: The further hearing of the matter is continued until Monday, January seventh, at two o'clock p. m. The Justices' Courts will reorganize on Monday, and that will occupy the attention of the Justices during the forenoon.

MR. CLUNIE: Our depositions are closed, and I ask that it be noted that we ask the Court to forward our depositions to the Legislature, and I object to the continuance being taken to-day, the whole of the rest of the day being before the Commission.

MR. DORN: I ask that the reporter note that the reason for the continuance until two o'clock next Monday, is because the Justices' Courts will be reorganized on Monday afternoon, and that the Justices have continued the matter of their own motion.

[Here the further hearing was continued until Monday, January 7, 1889, at two o'clock p. m.]

FIFTH DAY.

SAN FRANCISCO, CALIFORNIA,)
MONDAY, January 7, 1889—2 o'clock p. m.)

Present: Justices Stafford and Boland, the contestant and respondent, and their respective counsel, and Thomas R. Knox, shorthand reporter.

MR. DORN: Before proceeding with the depositions I wish to announce that Mr. Reddy will appear in conjunction with me as counsel in this case, from this time on. I see Mr. Dykeman is here to sign his testimony, and I would like to ask him one further question.

MR. CLUNIE: We have closed our case. You can call him as your witness, I suppose.

MR. DORN: Very well.

JOHN J. DYKEMAN.

Recalled as a witness on behalf of respondent.

Direct Interrogatories.

By MR. DORN: I believe you testified in this case some time ago, did you not? Answer—Yes, sir.

Q. Under subpoena from the contestant? A. Yes, sir.

Q. At that time you testified, I believe, that you were employed in the Appraiser's building as an engineer? A. Yes, sir.

Q. How long have you been so employed? A. Three years next March.

Q. You are employed there at the present time? A. Yes, sir.

Q. Where were you employed before you secured the position you are now occupying? A. I was not employed at all for about four or five months.

Q. Prior to that four months, what were you engaged at? A. I was a Deputy in the Assessor's office.

Q. Prior to that, what were you engaged at? A. I was not engaged at all prior to that, for a short time.

Q. Before that short time, what were you doing? A. I was water tender on a steamer.

Q. What steamer? A. The steamer "Yaquina."

Q. Who did you receive your appointment from? A. The engineer.

Q. Who was that steamer run by? A. The Oregon Development Company.

Q. Have you ever been employed by the Harbor Commissioners? A. No, sir.

Q. Have you ever been employed on a steamer which was run by the Harbor Commissioners? A. No, sir.

Q. You have never been employed, either directly or indirectly, by the Harbor Commissioners? A. No, sir. I was employed by a man that did the repairing for the Harbor Commissioners.

Q. What was his name? A. His name was Deakin.

Q. In what capacity were you employed? A. As a machinist.

Q. Where? A. In his shop.

Q. Where was the shop? A. On Main Street.

Q. Were you paid by the Harbor Commissioners, or by him? A. By him.

Q. Entirely? A. Entirely.

Q. And you never worked for the Harbor Commissioners? A. No, sir; I never received any pay from them.

Q. Did you ever do any work for them for which you did not get pay? A. Not for them; no, sir.

Q. Who paid you? A. Mr. Deakin.

Q. Where is his place of business? A. The number then was 135 Main, and since then it has been burned down, but it is in about the same place, I think.

Q. What is his business? A. Machinist.

Q. When did you quit that employment? A. About six years ago.

Q. Do you know a steamer or dredger, or whatever it is called, called the "Anosha," on the bay here? A. Yes, sir.

Q. Who ran that steamer? A. The Harbor Commissioners.

Q. Were you ever employed on that steamer, I asked you? A. I don't understand your question directly.

Q. I asked you the direct question, Were you ever employed on that steamer? A. I have done repair work on that steamer; yes, sir.

Q. What repair work did you do? A. Overhauling the machinery.

Q. In what way? A. General overhauling.

Q. Tell us in that general way what you did. Did you turn the boilers over, or did you take them out, or what did you do? A. Just filed up the brasses, and straightened things generally.

Q. And that is all you did, was it? A. That; and I can't recollect what work I have done.

Q. For whom did you do that work? A. For Mr. Deakin.

Q. When did you do that work? A. Six or seven years ago, or eight, probably.

Q. Wasn't it within the present year? A. No, sir.

Q. Do you swear positively to that? A. I swear positively.

Q. At the time you did that work were you not, as a matter of fact, under salary from the Harbor Commissioners? A. No, sir.

Q. Were you not? A. I was not.

Q. After you did that, didn't you render a bill for some two hundred odd dollars for new brasses and finishings? A. No, sir.

Q. What bill did you present? A. None at all.

Q. You worked for nothing? A. I received my wages from the man that employed me.

Q. As a matter of fact, didn't you present a bill either for yourself or your employer? A. No, sir.

Q. You never did? A. I never did.

Q. You don't know anything about any bill that was presented? Wasn't there a fraudulent bill presented by you for some \$200 for brasses, claiming it to be new: and wasn't the bill objected to; and didn't you lose your position on account of it? A. No, sir.

Q. You are as positive of that as anything else you have testified to? A. Anything else.

EDWARD ATTRIDGE.

A witness called for respondent, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Mr. Attridge, where do you reside? Answer—2005 Leavenworth Street.

Q. How long have you lived there? A. About twelve years.

Q. Have you lived there with your folks? A. Yes, sir.

Q. Were you in Court some day or two ago, during the hearing of this proceeding, when Mr. Riley and Mr. Fay testified? A. No, sir.

Q. You were not? A. No, sir.

Q. Where were you the Sunday night before election, Mr. Attridge? A. I believe I went around with Mr. Banks.

Q. You believe you went around with Mr. Banks? A. Yes, sir.

Q. In company with Mr. Banks did you go on that evening to the North End Social Club? A. Yes, sir; we were down there.

Q. Tell me how you happened to go there? A. We were over at the boat clubs, over on the beach, and we came along, going along Francisco Street, I think it is, where the club is, and as we were walking down two young fellows walked from across the street and said, "Hello, Mr. Banks."

Q. Do you know who the young fellows were? A. I could pick one of them out.

Q. Is he in the Court? A. No, I don't see him here.

Q. Where did he come from? A. He came from across the street, I believe, to this saloon, and he shook hands with Mr. Banks, and walked down, and when we got in front of the clubrooms he said, "Come on inside," and Banks said, "I have got an appointment on the other corner with Smith, and he is two hours late." He said, "Come inside and see the picture frame that Mr. Morrow gave us."

Q. Do you know whether this gentleman who gave that invitation was a member of that club? A. I think he was.

Q. Go on. A. We went inside; they lit the gas up and there was a large crowd there, and they brought this frame down and showed it to Banks, and said Mr. Morrow gave it to them, and Banks looked at it, and he said it was very nice, and we were talking there, and they kind of threw little hints to get money to put their pictures into it; they made a remark that they wanted to get their pictures taken to put in the frame.

Q. Who did they make that remark to? A. To Mr. Banks. They didn't make the remark, but it was hard hinting toward that. We walked out then to get a drink, and they gave three cheers for Banks.

Q. Who asked him? Riley, the President of the club, asked him for money to have the pictures taken? A. No, he didn't ask him for any money, but they brought the frame down and put it on the floor and said they were going to get their pictures put there, throwing a hint for the money. It was not Riley who said so. And as we were going out he asked them to have a drink, and as we were going out they gave three cheers for him. Another gentleman with him said, "There is a club solid for you." And I said, "No, I know better," and he said, "No, I won't get a vote in that club; don't think I am a chump." We went over in the saloon, had a drink, and Billy put his glass on the table, and one of them, and one of them caught hold of him and pulled him down to the billiard table and got to talking, and I don't know what they said, and we all had a laugh over it, and what this gentleman said to Banks, I don't know.

Q. Did Banks give them \$10 to have their pictures taken? A. Not that I saw.

Q. If he did, would you have seen it? A. I would have in the club-room.

Q. If anybody testified that in the clubroom they were given \$10 by Banks to have their pictures taken, that testimony was not true, then? A. No, sir; I could see it if I was not close to him.

Q. And Mr. Riley testified as follows: "Mr. Morrow had sent down a big picture frame to the boys, and I asked Banks to give us money to have our pictures taken, and we all together talking, and he said he did not want to pay money for anything, and he said he would put \$20 over the bar; he would give us \$40 if we carried the precinct for him; he would put \$20 over the bar there, and he would give us \$20 more if the precinct was carried for him." Mr. Riley's testimony was that that conversation took place on Sunday night previous to the election, to the best of his knowledge and belief, between the hours of six and eight in the evening, and that it took place in Mr. Lilkendey's saloon. Did any such conversation as that take place? A. I believe they had a conversation in Lilkendey's, where he went to one side with Riley.

Q. Was anything said about giving them \$20? A. I didn't hear it.

Q. Would you have heard it if it had taken place? A. I couldn't tell whether they did. Unless they spoke it very loud I wouldn't have heard it.

Q. You didn't hear any such conversation? A. No, sir.

Q. Who went with you into the clubroom besides Banks? A. There was a man named Kline and these other two fellows that we met up the street.

Q. And who, if anybody, went with you over to the saloon besides the members of the club? A. Mr. Kline and Mr. Banks; three of us walked together.

Q. Mr. Kline, Mr. Banks, and yourself walked together? A. Yes, sir.

Q. Is Mr. Kline present here? A. I don't see him.

Q. Mr. Kline and yourself went to the saloon with Banks? A. Yes, sir.

Q. Is that the gentleman who went [indicating a gentleman who was called in at the door]? A. Yes, sir.

Q. You say that man took Mr. Banks aside and had a conversation. Where did that conversation take place? What part of the saloon? A. It took place right back against the billiard table.

Q. Who were present at the immediate place where the conversation took place? A. Mr. Kline was there, and I see him leaning over on the billiard table.

Q. Describe how it happened. What was Banks' position? A. Banks stood with his hands in his pocket, and was smoking a cigar, and the gentleman was talking to him, and Kline stood with his back against the billiard table, and Banks and the other gentleman that was talking with him stood this way [indicating], and Kline stood by the side of the billiard table. He could hear what they were saying, but I could not.

Q. You were the other side, then? A. Yes, sir.

Q. But Kline stood directly against Banks, and could have heard what was said, if anything had been said? A. I think he could; yes, sir.

Q. Was Kline in such a position that if Banks said anything at all he would have been able to hear it? A. I think he would; yes, sir.

Q. How close was he to him? A. Pretty close.

Q. Was he six feet? A. Closer than that.

Q. Was he within two feet? A. Well, two or three feet. Banks and the other gentleman was on the other side, and Kline was on the other side of the billiard table leaning right over [indicating].

Q. Did Kline occupy that position, and was he there that close to Banks the whole time the conversation went on, whatever the conversation was? A. I believe he was.

Q. Did you see Banks take out any \$20 and offer it to these men or make any display of money? A. No, sir.

Q. Do you know John J. Sullivan, the contestant in this case? A. Yes, sir, I do.

Q. How long have you known him? A. I knew him two years ago—over two years ago.

Q. You knew him over two years ago? A. Yes, sir.

Q. And have you known him ever since? A. Yes, sir; I have known him.

Q. Within the last month or two, and within at least thirty days before the last election, on the sixth day of November, 1888, did you see Mr. Sullivan? A. Yes, sir; I did.

Q. And did you have any conversation with him? A. I had a conversation with him, yes.

Q. Where was that conversation? A. I had a conversation down where I am working; down in my shop. I believe it was the Saturday before election.

Q. The Saturday before election? A. Yes, sir.

Q. Tell us what that conversation was. What did Mr. Sullivan come down there for? A. He come down there and I was standing across the street from the shop, and he come over and talked to me, and he gave me a pretty good roasting up for kicking against him, and he said if ever he could do me any harm, he would do so.

Q. What did he give you this roasting up for? Because you had been a Democrat, or because he thought you ought not to oppose him—which? What was his reason for giving you that roasting up? A. He thought I was a Democrat and ought to have stood with him.

Q. And what, if any, threats did he make against you? A. He didn't make any particular, but he told me if he could ever do me any harm, he would do it.

Q. He told you if he could ever do you any harm, he would do it? A. Yes, sir.

Q. Was that all the conversation? A. No, it was a little longer than that, but I cannot remember what else was said. That was the principal part of the conversation, though.

Q. Mr. Sullivan knew at that time that you were assisting or actively engaged in assisting in Banks' canvass, did he? A. Yes, sir.

Q. Prior to the election? A. No, sir.

Q. Who were present at that conversation? A. There was a young fellow named Jake Short.

Q. And yourself? A. Yes, sir.

Q. And Mr. Sullivan? A. Yes, sir.

Q. Did you ever have any further conversation with Mr. Sullivan relative to election? A. Yes, I think I had a conversation with him, first starting in.

Q. What was that conversation? A. He come down to me and asked me if I wouldn't stay in with him, and he said he never done wrong to anybody, and he would like to have me stay with him, and he told me if Banks promised to do anything for me, he would do the same thing, and we went down then to the corner, and we had a drink, and he said, "Ed., let me off light; don't cut me too bad." I told him in kind of an off way that I am in for Banks to win, if I can. That was about the whole of the conversation. And another man came down to see me.

Q. Who was the other man? A. Mr. Jack Tyrrell.

Q. Jack Tyrrell was one of the people who were actively engaged making Sullivan's fight over there, was he not? A. He come in the district.

Q. Wasn't he actively engaged in assisting Sullivan in the election? A. I don't know, but he come down to me on account of my being a Democrat, and asked me to pull down, and I told him I was in for Banks now, and I would stay right in through it.

Q. Mr. Sullivan then told you if you didn't assist him in the election for Senator, and that if he ever got the opportunity and could ever do you any harm, he would do it? A. He claimed I was doing him dirty work.

Q. And he told you if anybody else would do anything for you, he would do as much? A. Yes, sir.

Q. Did he say what he would do for you? A. No, sir.

Q. Did Maxwell ever call on you? A. Mr. Maxwell was down to see me before the primary election and wanted me to go to the convention, and I told I didn't want to go, and I told him I went two years ago to help Sullivan along, and I got no thanks for it.

Q. What did Maxwell at that time tell you, if anything, about putting you in the Fire Department if you would stand in this time? A. He didn't exactly tell me he would put me in the Fire Department.

Q. Give us the language he used? A. Why, he asked me of any young fellow up on the hill that wanted to go in there. He asked me about this young fellow, Jack Finney, and I said, "He is a pretty good fellow." and he said, "Do you think he is a proper fellow to put in the Fire Department?" And I said, "Yes, I think so."

Q. What did he say about putting you in the Fire Department if you helped Sullivan in the election? A. He said this was about the only time the young fellows along there had a chance, and he said, "I want to see you put in this time."

Q. And as a consideration for that, he asked you to vote for Sullivan? A. He asked me to go to the convention; he didn't ask me to help Sullivan.

Q. But he proposed to put you in the Fire Department and get you a position if you would stand in with the boss? A. He did not exactly promise me the Fire Department, but he said if there was a position got I would get it, and he would try and get it for me.

Cross Interrogatories.

By MR. CLUNIE: You have been a great friend of Mr. Banks for years, haven't you? A. No, sir; I have not.

Q. A warm personal friend of his for years? A. No, sir.

Q. How long have you been acquainted with him? A. Not very long.

Q. How long? A. Just this last campaign.

Q. You are a Democrat, are you not? A. No, sir.

Q. You never were? A. Yes, sir.

Q. When did you turn over? A. This last year.

Q. Did you go over on account of the tariff question? A. No, sir; I did not; I went over because I thought I would get treated better on the other side.

Q. You are sure the tariff had nothing to do with it? A. Sure of it. I have got my own mind, and I think I can vote the way I want.

Q. You thought you would be treated better on the other side? A. Yes, sir.

Q. Why was that? A. I didn't get treated right on the other side.

Q. How is that? A. The men I am working for are Republicans, and they have been talking to me right along.

Q. Then it was not because you were not treated right, but it was because the men you are working for asked you to go there? A. Because the man I am working for asked me, and because I was not treated right.

Q. Now, you had two reasons: one, because the man you are working for asked you, and the other, because you were not treated right. Now, tell me about how you were not treated right. Tell us how you were not treated right. You did not expect to be Governor, or anything of that kind, did you? A. I did not; no.

Q. Why were you not treated right? A. I said two times these people have got no use for me. I asked for something two years ago, and I didn't get it.

Q. You asked for something two years ago, and you did not get it? A. Yes, sir.

Q. What did you ask for? A. I asked for the police force.

Q. And they didn't give you the police force, so you went over? A. I didn't want the police force, but I wanted to be a police officer.

Q. That was a mistake, then, that you wanted the police force. You asked them to be police officer, and they didn't do it, and you thought you would go over? A. Yes, sir; that was it.

Q. Who did you ask this? A. Buckley himself.

Q. You thought Buckley had the giving of the police officers, did you? A. I did; yes.

Q. What made you think that? A. Because I was in the Municipal Convention two years ago, and I went to see Buckley, and I asked him for this, and I said I might want it some time, and he said: "I will do it for you, if I can, Attridge."

Q. You knew Buckley was not a Police Commissioner, didn't you? A. I did.

Q. You knew he was not on the force in any way? A. I knew he was not on the force; yes, sir.

Q. Still you thought he could give you a police position? A. I thought he could give me the position there.

Q. Was that before or after the last convention? A. It was right while the convention was in session.

Q. That was while the convention was in session before the last election? A. Before the last election.

Q. Then Buckley told you he would do what he could for you? A. Yes, sir.

Q. Then you went on and were a Democrat that year? A. Yes, sir.

Q. You are in politics for what is in it, are you? A. Yes, sir.

Q. For whatever you can get out of it? A. I don't know what a man is dealing in politics for. He ain't dealing in it for fun.

Q. You ain't in it for fun? A. No, sir.

Q. Then you went over to the Republican party for the fun you could get out of it? A. I went over for good friends and to benefit myself.

Q. What do you mean by that? A. In case I should want anything I could go after it, and I might be able to get it.

Q. Did the Republicans tell you they would treat you better if you came in? A. No, sir.

Q. What made you think you would get treated better than the Democrats treated you? A. Because, when I told him I asked Buckley to get on the police force, a man named George Allen, the foreman of A. Schilling, he come to me and offered to put me on the police force.

Q. Who is this Allen? A. He is foreman for A. Schilling & Co.

Q. Then you wanted to get on the police force? A. I refused it.

Q. You didn't want to go on? A. No, sir; not then.

Q. Still you went over to the Republican party? A. Yes, sir.

Q. You didn't want it this time? A. Not this time; I might try next time.

Q. You expect something next time; is that it? And for that reason you went in for Banks to hold four years. He holds four years, don't he? A. Yes, sir.

Q. And you expect something next time? A. I never got a promise from him.

Q. You expect something? A. Not unless I can have it.

Q. Didn't you swear a minute ago you expected to get something next time—in two years from now? A. If I went after it, I said I expected to get it.

Q. Did you say anything about going after it?

MR. DORN: Yes, that is what he said.

MR. CLUNIE: Don't interfere with me.

Q. Didn't you testify a moment ago that you didn't want anything now, but you expected to get something in two years from now? A. I said if I went after it, I expected to get something from the Republican party.

Q. Did you go after it? A. I don't know whether I will or not.

Q. Haven't you made up your mind about it? A. No, sir; I haven't.

Q. Do you think you will go after anything? A. I couldn't tell you what I think about it or not. I ain't thinking of it now at all.

Q. When you determined to go over to the Republican party, what did you do? How did you go over there? Tell us what you did. A. I don't think I did anything more than getting out and trying to work the ticket.

Q. You say you only knew Banks since the last Republican Convention; is that it? Is that what you say? A. I only knew him this last campaign.

Q. When did you become acquainted with him? A. Inside of the time—inside of a couple of months.

Q. A couple of months before the election; is that it? A. Yes, sir.

Q. Where did you meet him? A. Right down at my own shop.

Q. Did he come down there? A. He came down there with a gentleman named Stevenson.

Q. What did he say to you? A. I was introduced to Banks by Stevenson.

Q. Banks at that time was a candidate, was he? A. Yes, sir.

Q. What did he say then? A. He only said he understood I was taking an active part in his fight and he was glad to hear it.

Q. You were taking an interest in his fight before he came down to see you? A. Before I knew him; yes, sir.

Q. Who got you to take that interest? A. Jim Stevenson, the foreman of the shop where I am working.

Q. And Mr. Allen? A. Yes, sir.

Q. Allen and Stevenson? A. Yes, sir.

Q. And Allen was the one who told you if you wanted to go on the police force he would get you there? A. Yes, sir.

Q. And he requested you to do it? A. Yes, sir.

Q. And he and Stevenson requested you to do it, and that was why you did it? A. No; I told you I was not treated right.

Q. Didn't you testify awhile ago that Mr. Allen had requested you to get in and work? A. Yes, sir; I testified that and the other.

Q. Both? A. Both of them.

Q. Mr. Allen was the one that told you you would be treated better, wasn't he? A. He didn't exactly tell me I would be treated better, but he made an offer to me that meant just as much.

Q. He made an offer to you that meant just as much? A. Yes, sir.

Q. And this Mr. Allen was the one that requested you to work for Mr. Banks? A. Yes, sir.

Q. It was on account of Allen? A. Partly on account of that.

Q. What did Banks say when he came down? A. He didn't say any more than he heard I was taking a pretty active part in his fight, and he was glad to hear it.

Q. And you both said "good-by," then, and he went out? A. There might have been more, but I don't remember it.

Q. That was only about two months before election, was it? A. About that.

Q. You have not a very good memory, have you? A. No; a poor memory.

Q. Then all the testimony you have given here has been given when you all the time had a poor memory. Everything you have testified to here you have testified to positively, haven't you? A. Yes, sir.

Q. Are you sure, then, that Banks, in the transaction with these boys at the North End Social Club, didn't have any money in his hand at that time? A. Not in the clubroom.

Q. You might have forgotten it? A. I don't forget that at all.

Q. Why do you remember that and not remember what Banks said to you? A. I told you what he said.

Q. No, not all of it? A. Well, the principal part of it, I told you.

Q. And that was not all? A. No, sir.

Q. When did you see Banks again? A. I saw him off and on; I couldn't exactly tell you when and where.

Q. When next did you see him, do you remember? A. No, sir; I can't remember.

Q. Do you remember how frequently after that? A. Not very frequently; maybe once or twice a week.

Q. Did you have any particular place to meet him? A. No, sir.

Q. He had no headquarters? A. No, sir.

Q. You went around with Banks, didn't you? A. Yes, sir.

Q. Did you quit work and go around? A. No, sir.

Q. You didn't go round in the daytime? A. No, sir.

Q. You went around at night? A. I went around one Sunday night and afternoon with him.

Q. You went around before that yourself, didn't you? A. Yes, sir.

Q. You went around most every night, didn't you? A. Yes.

Q. And spent your money? A. Yes, sir.

Q. And invited the boys to take a drink? A. Yes, sir.

Q. And told them you were making Banks' fight, didn't you? A. I asked them to vote for Banks.

Q. How long did you keep that up? A. I guess about three or four weeks.

Q. Do you work down in Schilling's, do you say? A. Yes, sir.

Q. What do you get there? A. About \$80.

Q. Are you a married man? A. No, sir.

Q. You have no one but yourself? A. No, sir.

Q. This money you spent was all your own, was it? A. Yes, sir.

Q. How much did you spend? A. I couldn't exactly tell you. I don't believe I spent more than \$30 or \$40.

Q. You went around in the saloon there three or four weeks, and you only spent \$30 or \$40; is that it? A. I didn't go around saloons every night.

Q. Where did you go? A. I went to people's houses.

Q. You made a pretty careful canvass of the district, didn't you? A. Yes, sir.

Q. What induced you to do that particularly for Banks? Did you think Banks was of more importance than Harrison? A. No, sir; I did not.

Q. What induced you to go around? You didn't do this for Harrison, did you? A. No, sir; I didn't want to do it for Harrison.

Q. You didn't do it for the Presidential Electors, did you? A. Yes, sir; I tried to turn people over.

Q. Did you go to their houses? A. I have asked a couple of people.

Q. How many did you ask? A. I couldn't tell you how many.

Q. Did you ask as many for the Presidential Electors as you did for Banks? A. I don't hardly think I did. I was making my fight principally among Democrats, and I think it would be foolish to ask Democrats to vote the Republican ticket.

Q. You were making your fight among Democrats, and all you asked them to do was to scratch their tickets and vote for Banks; was that it? A. That was the principal part of it.

Q. What was your particular idea in taking this interest in Banks' fight? Why did you do that? What was your object in that? A. Because friends of mine had asked me to work for Banks.

Q. What friend? A. The foreman down in my shop.

Q. Mr. Allen? A. Yes, sir.

Q. That is the same gentleman that wanted to put you on the police force? A. Yes, sir.

Q. Is he the only one that asked you? A. No, sir.

Q. Who else? A. Jim Stevenson asked me.

Q. Who else? What did Jim Stevenson say to you when he asked you? A. He didn't say much to me. Jim Stevenson and I are pretty good friends, and Jim asked me if I wouldn't get in and help Banks out, and I said yes.

Q. Did he say why he wanted you to help Banks out? A. No, sir; he did not.

Q. Did he say Banks had promised to take care of him if he was elected? A. No, sir.

Q. Didn't Stevenson tell you Banks had agreed to take care of him if he was elected, and that it would be to his interest if he was elected, and for you to get out and work for him? A. No, sir.

Q. Didn't Banks promise to take care of you if he was elected? A. No, sir.

Q. Didn't you so state to Mr. Sullivan? A. No, sir.

Q. Didn't you so state to Mr. Tyrrell? A. Jack Tyrrell?

Q. Yes. A. No, sir.

Q. You had a conversation with Tyrrell, didn't you? A. Yes, sir.

Q. You had a conversation with John Sullivan? A. Yes, sir.

Q. They both called at your factory where you were working, did they? A. Yes, sir.

Q. Didn't Tyrrell ask you what the reason was you were against Sullivan and for Banks, and he was also surprised because you were always a Democrat; and didn't you state that the reason was because you couldn't get anything out of Sullivan and you could out of Banks? Didn't you so state? A. I don't know whether I did or not; I might have said so.

Q. Don't you know you said so, and don't you know that that is the fact? A. I don't exactly know.

Q. Don't you exactly know whether that is the fact or not; whether that statement was made to you? A. No, sir.

Q. Just swear one way or the other on that; was it made or not? A. I couldn't tell. Jack Tyrrell asked me, "Anything Banks agreed to do for you, I will bring you up and Sullivan will do it," and he gave his word that Sullivan would do it.

Q. Jack Tyrrell said he would give his word? A. Jack Tyrrell said he would give his word, anything Sullivan would promise me would be faithful.

Q. Anything Banks promised you, Sullivan would too? A. Anything Banks promised me Sullivan would do the same.

Q. How did he come to say that to you? A. Just by spitting it out of his mouth.

Q. Didn't you say anything to cause him to spit it out? A. I don't think I did.

Q. Didn't you tell Tyrrell there that Banks had made some promises to you, and then didn't Tyrrell say that anything Banks had promised Sullivan would do. Isn't that the fact and isn't that the whole conversation that occurred between you? Is it or is it not? I want you to swear at it now, sir. A. I don't know.

Q. You don't know? A. I can't exactly remember. I might have told Tyrrell I would get something, or something of that kind.

Q. As a matter of fact don't you know you did tell Tyrrell you would get something? A. I don't know whether I did or not.

Q. What is your best recollection as to that? A. I stated before I couldn't tell.

Q. You can't remember as to that? A. No, sir.

Q. You remember positively about all that occurred when you and Banks went around that night, though; you remember that all positively?

A. I remember that down at the North End Club.

Q. You remember that particularly, do you? A. Yes, sir.

Q. Why do you remember that more than you do anything else? A. Because I was right there when they had the talk; the transaction.

Q. Weren't you right there then, when you and Jack Tyrrell had the talk? A. Yes, I was right there too.

Q. You weren't any nearer than you were at the North End Club, were you? A. No, sir.

Q. Then how is it you recollect more of that than you do of the Jack Tyrrell conversation; can you explain that to us? A. No, I can not.

Q. But you won't swear you did not tell Jack Tyrrell and Johnny Sullivan you expected to get something from Banks? You won't swear to it? A. I won't swear to it; no, sir.

Q. Where did you and Banks go that night you were traveling around through the district? A. The first place I met him was down on Union Street, about Powell Street.

Q. Where did you go from there? A. We went down to, I believe it was, the Triton Boat Club. I think that was the first place we went to.

Q. Who did you see there? A. I don't know who the gentleman was we spoke to.

Q. What was the conversation that occurred between you and Banks and that gentleman? A. I was not so close to him that I knew. Banks went down, I believe, looking for a man named Curley, and Curley was not there, and they took him up, I believe, to his house.

Q. What was the name of that boat club? A. The Triton, I believe.

Q. You went down with Banks? A. I went down, but I didn't go in the club. I didn't go down to see anybody.

Q. And you did not hear the conversation that occurred between them? A. No, sir.

Q. It was Banks' custom, whenever he was going to talk with anybody, to separate himself from you, did he? A. He generally did that.

Q. That was up in this saloon, wasn't it, when he wanted to talk with these people he got away from you? A. No, sir.

Q. You were there all the time? A. Yes, I was there all the time.

Q. And you heard all the conversation with Fay and Riley, and all these gentlemen? A. I heard it in the clubroom, but not in the saloon.

Q. Did you hear it all after you got in the saloon? A. No, I didn't. I didn't hear nothing in the saloon.

Q. There was quite a large crowd in the saloon, wasn't there? A. Yes, sir; quite a large crowd.

Q. And you were mixing with the crowd? A. Yes, sir.

Q. Weren't you paying any attention to what Banks was doing? A. I saw this gentleman take Banks one side and have a talk with him.

Q. But you were not noticing what he was doing, and you were mixing with the crowd, weren't you? A. Yes, sir.

Q. Did you see Banks give any money out that night? A. No, sir.

Q. Not a dollar? A. No, sir.

Q. He didn't treat anybody to drinks? A. Yes, sir.

Q. Where did he treat? A. He treated down in that saloon—Lilken-dey's.

Q. That was the only place? A. No, sir; it was not the only place.

Q. Did he have many private conversations with gentlemen that night? A. No, I didn't see many private ones.

Q. How many do you think there was? A. There was a big crowd around him talking, and I didn't see anything private about it. The only one was down there at the boat club.

Q. And you didn't participate in any of these conversations? A. No, sir.

Q. Did Banks ever give you any money? A. No, sir.

Q. Did he ever give you \$10 and say, "Here is \$10?" A. No, sir; all the money he gave me was \$10 to pay for a buggy, and I paid some money myself.

Q. How much did he give you to pay for a buggy? A. I believe it was \$7 50.

Q. And that was all the money you ever received from Banks? A. Yes, sir.

Q. Then you don't know what Banks agreed to do for you? A. He agreed to do nothing.

Q. Then if you made such a statement it was a falsehood, was it? A. I don't say I made it.

Q. Well, if you did make it, you must have stated a lie, mustn't you? If you told it to Sullivan and it was not so, you must have told a falsehood; isn't that a fact? Was it so? A. Was it so?

Q. The statement you made to Sullivan about Banks having agreed to take care of you, and the statement you made to Tyrrell; which was it—so, or was it not?

MR. DORN: I object to that form of question. A. Banks never promised me anything.

By MR. CLUNIE: Did anybody on behalf of Banks ever promise you anything? A. No, sir; no one did.

Q. Did you ever tell Sullivan, Banks had agreed to take care of you or that some of his friends would? A. I believe Sullivan occupied a pretty good job, and I was willing to occupy it.

Q. And you didn't tell him and tell Tyrrell that Banks and his friends had agreed to take care of you? A. I might have told him that.

Q. What was your object in telling him that, if nobody agreed to it with you? A. Banks had not agreed to it.

Q. Did anybody? A. No, sir.

Q. Did anybody ever talk to you about this except Stevenson and Allen? Did anybody ever send for you? A. No, sir.

Q. No one at all? A. No, sir.

Q. You are sure of that? A. No, sir.

Q. And you are sure that you talked with nobody about the Banks-Sullivan fight? A. I talked to one man about it.

Q. Who was that you talked with about it? A. He didn't send for me, though—the man didn't.

Q. I asked you who you talked with. [A pause.] You are not afraid to tell, are you? A. No; but I don't want to tell.

Q. You better tell us, I think; we would like to know. Was it Mr. Jake Shaen? A. No, sir.

Q. Was it Ray Falk? A. No, sir.

Q. Was it William Williams? A. It was not.

Q. Are you sure of that, now? A. I am sure of that.

Q. Tell us who it was? A. I refuse to answer that question. It was not Mr. Higgins, though.

MR. CLUNIE: I would like your honors to instruct him to answer.

THE COURT: Answer the question.

By MR. CLUNIE: Who was that man? A. It was the Governor.

Q. Governor Waterman sent for you, did he? A. No, sir; he didn't send for me.

Q. How did you come to go to Governor Waterman? A. I was brought up there.

Q. What were you brought up there for? A. I don't know.

Q. You don't know what you were brought up there for? A. I was brought up there—I was going up to Higgins, but it was claimed that Mr. Higgins was sick, and he says, "Come up and see the Governor;" and I went up.

Q. Who took you up? A. Mr. Banks.

Q. Mr. Banks took you up to Mr. Higgins? A. He didn't take me to Mr. Higgins.

Q. He was going to take you to Mr. Higgins? A. Yes, sir.

Q. Then he said Mr. Higgins was sick, and then he said to come up and see the Governor? A. Yes, sir.

Q. Was that it? A. Yes, sir.

Q. You went up, then, and saw the Governor? A. Yes, sir.

Q. You had a nice talk, did you? A. About two minutes.

Q. Are you on friendly terms with the Governor? A. I don't know if it had been very friendly or not.

Q. That was the first time you ever saw the Governor, was it? A. He was pleased to see me, and he was glad to hear I had turned over.

Q. He had heard of your turning over? A. I don't know whether he did or not, but I told him I did. I told him I had turned over Republican.

Q. What did he say? A. He didn't say much. He didn't say anything.

Q. He just said he was glad to hear you had turned over? A. Yes, sir.

Q. Did he ask you where you lived? A. I don't think he did.

Q. Just tell us the conversation that occurred between you and the Governor of this great State, and Mr. Banks? A. It was not very much.

Q. Tell us what it was? A. It was nothing at all, any more than Banks said the Governor was a personal friend of his and introduced me to him.

Q. And what did the Governor say? Banks said, "Attridge, the Governor is a friend of mine;" is that it? A. He told me the Governor was a personal friend of his; yes, sir.

Q. When you got up to the Governor, what occurred? Did Mr. Banks go in and say, "Mr. Attridge, the Governor is a personal friend of mine." Is that the way it was? A. No, sir; he introduced me to the Governor, and he told him I was doing all I could for him.

Q. What did the Governor say? A. He said he was glad to hear it, and I told him I was a Democrat up to that time, and I was a Republican now, and he said he was glad to hear it.

Q. Was that all? A. That was about all.

Q. Then you went out? A. Some one come in the room and we went out.

Q. Was Mr. Higgins up there? A. No, sir.

Q. Mr. Higgins was not with the Governor that time? A. No, sir.

Q. Did you and Mr. Banks ever speak with the Governor after that time? A. No, sir.

Q. Did Mr. Banks tell you he expected to have a great many vacancies down on the waterfront down here? A. No, sir; he did not.

Q. Did he tell you that there might be a vacancy by which you might get in? A. No, sir; not exactly.

Q. Did he tell you that, I say? A. No, sir; he did not.

Q. Did you have words enough with the Governor to understand that the Governor would take care of you? A. No, sir.

Q. Did you have enough to satisfy you that he would? A. No, sir.

Q. What did you go up to the Governor there for? A. Because I was brought there.

Q. What was it for? A. I didn't know what it was for.

Q. Were you curious to see him? A. No, sir; not a bit.

Q. You had not heard that he was looking for you? A. No, sir.

Q. You had no particular interest to see Governor Waterman? A. No particular interest.

Q. You hadn't gone up to the hotel to see him before, had you? A. No, sir.

Q. What, in your own mind, caused you to go up there? A. Because Banks asked me to go and be introduced to him.

Q. Wasn't it because Waterman was to tell you you would be taken care of if you took part in the Banks fight? A. No, sir.

Q. Why did you go to see Mr. Higgins? A. Because I was asked to.

Q. Did you know him? A. No, sir.

Q. Why did you want to go to see Mr. Higgins? A. Because, if I am a Republican, I want to know the man I am dealing with?

Q. Mr. Higgins don't own the Republican party, does he? A. Well, he owns pretty near it.

Q. Did Mr. Banks give you that information? A. No, sir.

Q. Did you understand that Mr. Higgins owned Mr. Banks? A. No, sir.

Q. Did Mr. Banks ever tell you that Mr. Higgins was a personal friend of his? A. No, sir.

Q. Did he tell you Mr. Higgins would be guided in dealing out these appointments by Banks' advice? Did he tell you that? A. The Governor?

Q. Yes, the Governor. A. No, sir.

Q. Didn't he tell you Mr. Higgins would have a nice lot of fat positions here? A. No, sir.

Q. And that the Senators, in particular, would have a chance in dealing them out? A. He never mentioned Mr. Higgins' name.

Q. Didn't I understand you a moment ago that Mr. Banks asked you to go up and see Mr. Higgins? A. Yes, sir.

Q. Now you say Mr. Banks never mentioned Mr. Higgins' name. A. You said the Governor.

Q. Did Mr. Banks tell you? A. Mr. Banks told me to come up and see Mr. Higgins. He said, "I can't promise nothing; I haven't got the goods to fill them."

Q. He couldn't promise anything because he didn't have the goods to fill them with. A. Yes, sir.

Q. But Mr. Higgins had lots of goods and he would go up and see if he could get a counter for him; isn't that the fact? A. I don't know as it is exactly the fact.

Q. Ain't that pretty near the fact and isn't that pretty near it?—you to bolt the Democratic party and Mr. Sullivan, who has been your friend?

A. Mr. Sullivan been my friend!

Q. He has not been your friend? A. No, sir.

Q. You have always been linked with the Democratic party, haven't you? A. Yes, sir.

Q. Wasn't it that hope that induced you to go with Mr. Banks to see Mr. Higgins? A. It was not an office for myself.

Q. Who was it for? A. Some one I might ask for hereafter.

Q. You wanted to get an office for somebody else; was that it? A. Yes, sir.

Q. And through Mr. Banks you wanted to get an office for somebody else? A. I told him nothing of the kind.

Q. When did he tell you he couldn't make any promises? A. I told him I was taking an interest in his fight, and he told me he couldn't fulfill any promises, but he could take me to a man that would do it.

Q. Then Mr. Banks said that voluntarily, without asking anything of him; is that it? A. That is about it.

Q. Didn't Mr. Banks ask you what you wanted? A. No, sir.

Q. And didn't you tell him, and didn't he tell you he couldn't promise you anything, and if you would go he would take you to a man who could do it? A. No, sir.

Q. Ain't that about it? A. Well, no.

Q. Did you see Mr. Higgins? A. No, sir.

Q. You tried to see Mr. Higgins? A. Yes, sir.

Q. He was the man Mr. Banks referred to as having the places to deal out? A. He didn't refer to him, but he brought me up there to see him.

Q. What did he bring you up there to see him for? A. To get acquainted with him. What did I want to see Buckley for two years ago?

Q. Didn't Mr. Banks say he couldn't give you any promises because he couldn't fulfill them, but would take you to a man that could? A. If I wanted it.

Q. Then you did see him to get taken care of? A. No, sir.

Q. Well, for your friend? A. If I wanted it.

Q. Then you did not see Mr. Higgins? A. No, sir.

Q. Then at the same time and in the same conversation, Mr. Banks said "Let us go see the Governor." Is that it? A. Yes, sir.

Q. At that time you were hunting this assurance that you could have a place for your friend? A. I was not exactly hunting it.

Q. You wanted to know it? A. I wanted to have a talk with the man I am dealing with. I wanted to be acquainted with him. That is why I went up there.

Q. You considered you were dealing with Mr. Higgins, and then Waterman, didn't you; isn't that the fact? A. I considered I was dealing with the Republican party.

Q. Who are the Republican party? Mr. Waterman and Mr. Higgins? A. No.

Q. Just Mr. Higgins? A. No, lots more of them.

Q. Who else? A. I think all of them holding offices are Republican.

Q. Did you want to talk with all the men holding offices? A. No, sir.

Q. You said you wanted to know the men you were dealing with? A. I would like to know any good gentleman.

Q. Did Mr. Banks take you around and introduce you to all the men holding offices here? A. No, sir.

Q. He just took you to find Mr. Higgins and couldn't find him, and you subsequently went to see Governor Waterman. Did you find Mr. Higgins? A. No, sir.

Q. You were hunting for an assurance that your friend would be taken care of if you wanted him to be? A. If I asked it; yes, sir.

Q. That was your object in visiting Mr. Higgins that day with Mr. Banks? A. I went up to see Mr. Higgins.

Q. You did not see Mr. Higgins that day? A. No, sir.

Q. Then you went to see Governor Waterman? A. Yes, sir.

Q. Did you get the assurance there? A. No, sir; I didn't. I got nothing.

Q. Did you ever see Mr. Higgins after that? A. No, sir, I never saw the man.

Q. You never talked with him? A. No, sir; not to know him.

Q. But to Governor Waterman; you were hunting for this assurance; and as soon as you saw the Governor you did not hunt any further for the assurance; is that the fact? [A pause.] You say you wanted an assurance that your friend would be taken care of if you wanted him to be? A. Yes, sir.

Q. And up to the time of seeing the Governor you were after that assurance, and went to see Mr. Higgins for it? A. I went to see Mr. Higgins to form his acquaintance.

Q. And up to the time you went to the Governor's room you had that desire? A. I didn't go up there for anything.

Q. Well, you had that desire, I say, and you went up to the Governor's room, in the Occidental Hotel, didn't you? A. Not from the Governor; no, sir.

Q. You had the desire to know it from Mr. Higgins, didn't you? A. Yes, sir.

Q. After your interview with the Governor you did not desire it any more. Is that the fact? A. No, it ain't exactly the fact.

Q. What do you mean by that: that it is not exactly the fact? A. I thought the way it was, Mr. Higgins, I guess, knows a little about me by this time, but I never spoke to the man.

Q. How does he know about you? A. Through other parties telling him, I guess.

Q. Who are the parties? A. I don't know.

Q. Who do you think? A. Jimmy Stevenson is one, I guess, and Ed. Williams.

Q. Who else? A. George Allen, foreman down at the shop.

Q. Who else? A. I think that is enough.

Q. Ain't there one more that spoke to him, if you could think real hard? A. Yes; there might be two.

Q. Just give us that one or two. You know who I want. Don't you think Mr. Higgins has heard a little about you from Mr. Banks? A. I guess he has.

Q. You and Mr. Banks had no friendship prior to the time of your meeting him at this time? A. No, sir.

Q. And the only reason of his speaking to Mr. Higgins about you would be for your part taken in this campaign? A. I guess so.

Q. If he did speak to Mr. Higgins, that was the reason of his doing it? After seeing the Governor, didn't he tell you it was all right now, that you would be taken care of, and that he would see Mr. Higgins for you? A. No, I guess not.

Q. Didn't he tell you that that day? A. No, he did not.

Q. Why didn't you say, "Well, Mr. Higgins is sick, and we can go up another day and see him." Didn't that occur to you? A. No, sir.

Q. In other words, as soon as you got out of the Governor's room you didn't want to see Mr. Higgins? A. If anybody was to come to bring me I would go.

Q. But you wouldn't hunt him yourself? A. No, sir.

Q. And prior to the time you were in the Governor's room, you were hunting him? A. Yes, sir.

Redirect Interrogatories.

By MR. DORN: Were you hunting him before this time? A. No, sir; never at all.

Q. You never hunted Mr. Higgins in your life, did you? A. No, sir.

Q. Did you try to see Mr. Higgins except one time when somebody took you there and proposed to introduce you to him? A. No, sir.

Q. You never did, before or after, try to see him? A. No.

Q. You say your object on that occasion was to try to get acquainted with him? A. Yes, sir.

Q. Did you intend to ask him for any position or for any promise? A. At that time I did not; I just wanted to be acquainted with him.

Q. All you desired to do was to be acquainted with him? A. Yes, sir.

Q. And if you had found him, it was not your intention to ask him for anything, but if you wanted to see him in the future you could do so? A. Yes, sir.

Q. Was this proposed introducing you to the Governor to get a promise or to simply get acquainted with him? A. Simply get acquainted with him.

Q. Did he tell the Governor you wanted anything or you wanted anything for anybody else? A. No, sir.

Q. He simply stated you were a Republican? A. Yes, sir.

Q. And Mr. Banks told him you were formerly a Democrat? A. Yes, sir.

Q. And the Governor said he was glad to hear it? A. Yes, sir.

Q. Did the Governor either directly or indirectly promise you anything for yourself or any of your friends? A. No, sir.

Q. Did you ask him for any such thing? A. No, sir.

Q. Did you go with the intention of asking something of him for anybody? A. No, sir.

Q. And you had no reason to expect it? A. No, sir.

Q. And you don't think you would get anything if you did ask it? A. No, I don't think I would.

Q. You say the reason you left the Democratic party was because you were not treated right? A. Yes, sir.

Q. As a matter of fact, then, your principal complaint against the Democratic party is against Mr. Sullivan and against Mr. Buckley, is it not? A. That is about the whole of it.

Q. Why did you expect Mr. Sullivan to be a friend to you two years ago and did not treat you right? What did you expect him to treat you right two years ago for? A. It was not Mr. Sullivan exactly, but it was the people that were behind him.

Q. You said awhile ago in your direct examination that you did not like Mr. Sullivan, or that you were down on Mr. Sullivan, or something to that effect, I believe, did you not? A. Yes, sir.

Q. What is the reason of that? Why don't you like Mr. Sullivan? He was a friend of yours, was he not? A. He was never any friend of mine. I worked for him, being a Democrat, and I worked for the whole ticket.

Q. Then why are you down on Mr. Sullivan? Why do you dislike him? A. One reason is, that there was a man who was in the Fire Department before he went to the Senate, puts him in his place and comes back again, and being a State Senator, and he throws this man out.

Q. Then what else did he do? Did he draw the pay himself? A. I believe he does.

Q. Do you say that is the reason you are down on him? A. Yes, sir.

Q. What is the salary he draws in that way? A. I think it is about \$34 a month.

Q. And you think a man that is in the Legislature, and comes back and throws a poor man out that he has put in his place, is a poor man for Senator? A. I don't think a Senator is a proper man to be in the Fire Department.

Q. And that is one reason you are down on him? A. Yes, sir.

Q. And the further reason, you say, you are down on him and the Democratic party was because you were not treated right two years ago? A. Yes, sir.

Q. You were active in the campaign for the Democratic party two years ago, were you? A. Yes, sir.

Q. Who did you apply to to do something for you two years ago? A. To Mr. Buckley.

Q. Why did you apply to Buckley? A. I told Geo. Maxwell, "If I am a Democrat, I want to be acquainted with the man I am dealing with." And I asked him to bring me down to Buckley, and he did so.

Q. I will ask you the same question you were asked a little while ago: Why did you want to see Mr. Buckley? A. Just to have his acquaintance. I don't want to be running, working the Democratic ticket and not knowing him, and he was doing the whole thing.

Q. Was Buckley on the Democratic ticket? A. No, sir.

Q. Why did you want to see him? A. He was running it.

Q. Then with the same opinion from Mr. Higgins, that he was the man you wanted to see in the Republican party, you thought Buckley owned the Democratic party? A. About the same thing.

Q. That was the way you sized up the two parties? A. Yes, sir.

Q. And you didn't think there was any use in your working until you got acquainted with him? A. No, sir.

Q. Then when you went to see the Governor on what you mentioned, you hadn't any intention of asking for any position, and didn't ask for any? A. No, sir.

Q. And you didn't ask the Governor for any assurance that you would get one? A. No, sir.

Q. And you simply wanted to get acquainted with him? A. Yes, sir.

Q. And your seeking for Mr. Higgins on that day was simply to get acquainted with him? A. No, sir.

Q. You didn't intend to, and would not have asked for any such thing had you seen him? A. No, sir; not at that time.

Recross Interrogatories.

By MR. CLUNIE—You were just paving the way. You did not get anything from the Governor when you went up there, did you? A. No, sir.

Q. You didn't find anything laying round loose up there? A. No, sir.

Q. Isn't it the fact that your idea in going to the Governor, and going to Mr. Higgins, was to get your father a place? A. No, sir.

Q. Didn't you so state to Mr. Sullivan? A. I might have.

Q. Is it not the fact? A. I guess I did. Mr. Sullivan said that he would do so, too.

Q. What is that? A. Maxwell came to me and said my father was looking for a place now, and if they got on top, why he would get it.

Q. You said your father was looking for a place? A. I didn't say so; I didn't say he was looking for a place.

Q. He wouldn't refuse one, would he? A. I don't suppose he would, if he got it.

Q. Did you tell Mr. Banks your father was looking for a place? A. No, sir.

Q. Isn't that the reason, as a matter of fact, why he took you up to Mr. Higgins, to get your father a place? A. No, sir; I don't know as it was. Banks told me he couldn't put no man to work.

Q. Did you tell him you wanted your father to get a place? A. No, sir.

Q. Didn't he take you up to Mr. Higgins to get you a place—ain't that the fact now? Didn't he take you and tell you to come along, and he would go up to Higgins and fix that? A. No, sir.

Q. What did he say about that? A. Nothing. I come down, and he asked me to go up and see Higgins.

Q. Had you mentioned your father's name to him before that? A. No, sir.

Q. Did you ever mention your father's name to him before that? A. No, sir.

Q. You didn't say a word to him or to Banks? A. No, sir.

Q. But you did tell Sullivan, Banks had agreed to get your father a place? A. I might have told him so.

Q. If you did tell him so, it was a lie, was it? A. I don't know. I have told lots of other people, too.

Q. You are in the habit of telling lies, are you? A. No, sir.

Q. Then if you have told a good many people lies, you must be in the habit of it? A. When you have lots of men around you, you say anything to get away, and you have got to tell them something when they ask your reason for it.

MR. DORN: That was the reason you were trying to get away from Sullivan.

By MR. CLUNIE: You are in the habit of lying, are you? A. No, sir.

By MR. DORN: If you said anything of that kind to Sullivan, it was because he was following after you and trying to get you to support him? A. Yes, sir.

Q. And Sullivan then did say if you would stand in with him he would give you anything that Banks would? A. Yes, sir.

Q. And you say he did make that promise to you before the last election? A. Yes, sir.

Q. And you declined the offer? A. Yes, sir.

By MR. CLUNIE: Do you know William Maxwell? A. Yes, sir.

Q. Didn't you meet him on the street one day before the election and say that you wanted a place for your father, and that Banks had agreed to get it for you? A. No, sir.

Q. Will you swear to that? A. No, sir.

Q. What did you say to him? A. Maxwell said to me, "Sullivan will beat Banks as much votes as he did Dr. May," and I said, "He may beat him, but he won't beat him as bad as he did Dr. May."

Q. Was that all the conversation? A. Well, I had a long conversation with him.

Q. But you did not tell him what I asked you in that last question? A. I don't know. I might have told him, too; I said I told lots of people.

Q. Do you swear positively that you did not tell Maxwell that you wanted a place for your father, and that Banks had promised to get it for you? A. I don't say that I did.

Q. If the notes show that, did you tell it to him? A. I might have said it to him or Sullivan.

Q. Do you say you did tell it to him? A. I don't know whether I did or not.

Q. When Sullivan saw you down at your place, who was with him? A. My father was.

Q. You had known him for a good many years prior to that, had you? A. Sullivan?

Q. Yes, sir? A. No, sir; I have not.

Q. You did not know Sullivan before that at all, did you? A. Yes, I knew him before that.

Q. What occurred when your father brought him down? A. He said anything Banks would do for him, he would do it.

Q. Didn't your father introduce Sullivan to you? A. No, sir; my father was introduced to Sullivan before that.

Q. But he did not introduce you to him? A. I don't know that he did; but I didn't need an introduction.

Q. Will you swear to that? A. I don't know why he need introduce him to me if I had spoken to him.

By MR. DORN: Did he introduce you? A. I can't say.

Q. You had known him before, had you? A. Yes, sir.

Q. And you had been acquainted with him? A. Yes, sir.

JAMES LYNCH.

A witness on behalf of respondent, being duly sworn, testifies as follows:

Direct Interrogatories.

By MR. DORN: Mr. Lynch, where do you reside? Answer—I live No. 3 Salmon Street.

Q. What are you politics? A. Republican.

Q. Were you present when a Deputy Sheriff by the name of Doran testified? A. I was not.

Q. If anybody testified that you were a Democrat, then they were slightly mistaken, were they so? A. I believe so.

Q. How long have you been a Republican? A. About six months, I suppose.

Q. And you voted the Republican ticket at the last election? A. I did.

Q. The witness Doran testified as follows; "I went to Lynch"—meaning you—"and asked him if he would vote for a friend of mine, Mr. Sullivan, and he said no, he would not, but he was for Banks; he said 'I have the Democratic ticket, but I have Banks' money, and I am here to work and buy votes for him.'" He testified that this conversation took place at the polling place of the Sixth Precinct of the Thirty-Third Assembly District, on the sixth day of last November. Did any such conversation as that take place? A. No, sir.

Q. Did you ever say to any person, or at any time, that you had Banks' money, and that you were there to work and buy votes for him? A. No, sir.

Q. Did you work or buy votes for Banks at the last election? A. No, sir.

Q. And you never stated so either to Doran or to anybody else? A. No, sir; not as I can recollect. If I did, I told him a lie.

Q. If Doran so testified he testified falsely, did he? A. I suppose so, yes.

Q. At the last election did you buy any votes for anybody? A. I did not.

Q. Did you bribe anybody to vote for anybody? A. No, sir.

Q. Did you have any of Mr. Banks' money to buy votes with? A. I did not.

Q. Were you given any money yourself to vote the Republican ticket? A. No, sir.

Q. You voted the Republican ticket as a matter of course? A. Yes, sir.

Q. And because you thought it was right? A. Yes, sir.

Q. Did you vote the Republican ticket or become a Republican because you expected a position, or something of that kind? A. No, sir.

Q. Or from a conviction that it was the right party? A. Yes, sir.

Q. Which was it? Were you promised anything or given anything? A. I was not.

Q. Or given anything as an inducement for changing? A. No, sir.

Q. You are simply one of the number of reformed Democrats, and concluded to change? A. Yes, sir.

Q. You had a good deal of company in San Francisco in that respect, didn't you? A. I did.

Q. You knew a good many more Democrats who went the same way, didn't you? A. I did.

Q. No such conversation as that took place, then? A. No, sir.

Q. And you never made any such statement to Mr. Doran? A. No, sir.

Q. Or to anybody else? A. No, sir.

Q. Do you know this Mr. Doran, a Deputy Sheriff? A. I do.

Q. He was over at the Sixth Precinct of the Thirty-third Assembly District at the last election, was he not? A. Yes, sir.

Q. What was he doing there? A. I don't know.

Q. What are his politics? A. He is a Democrat.

Q. Did he stand around, or what did he do during the day? A. He was standing there all day.

Q. What did he do with regard to getting people to vote one way or the other, that you observed? A. I didn't observe him getting anybody to do anything; I observed him speaking to his friends.

Q. Did anybody bring any people up to Mr. Doran to be talked to before they voted on that day? A. I couldn't say.

Q. As a matter of fact, didn't you see several people who were actively engaged in making a canvass for the Democratic party bring voters up to Mr. Doran and have a private interview with Mr. Doran, and then walk up and deposit their ballots at the Sixth Precinct of the Thirty-third District? A. Not exactly? I couldn't state.

Q. Tell us exactly how it happened. What was Doran doing there in the way of getting votes for the Democratic party? A. I couldn't observe that he was doing anything of the kind.

Q. What is that? A. I don't know that he has done anything of the kind.

Q. What did he do? A. He simply stayed there, as I said, and was speaking with his friends, and what conversation he had with his friends I don't know.

Cross Interrogatories.

By MR. CLUNIE: What is your business? A. I am a grainer.

Q. Where are you working? A. I am working at present on Pacific Street.

Q. How long have you been in that business? A. About ten years, I should judge.

Q. And you lived in this Twenty-first Senatorial District? A. Yes, sir; born there.

Q. Were you an officer up there? A. I was.

Q. What? A. Republican Clerk.

Q. You were a Republican Clerk? A. Yes, sir.

Q. Mr. Doran testified on his direct examination that you were a Democrat. You have been a Democrat, haven't you? A. Not exactly. I have only had one vote previous to this one, and it is a mystery to those people whether I was a Republican or Democrat.

Q. You were a Democrat, were you? A. Not exactly.

Q. Did you belong to the Non-Partisans? A. No, sir.

Q. You did not belong to the reform party, did you? A. I did.

Q. You were a member of the reform party? A. No, sir: but I was one of the reform Democrats that joined the Republican party.

Q. I thought you said you had never been a Democrat, exactly? A. Well, say that I did.

Q. You say you were a reformed Democrat, who had joined the Republican party? A. Yes, sir.

Q. Then you had been a Democrat? A. Then I guess I might have been a Democrat.

Q. Then Mr. Doran was not very far off, was he? A. Not on that question, no.

Q. You had only changed six months before the election? A. That is all.

Q. How long had you been investigating the great principles of the Democratic and Republican parties before the last election? A. Since last election.

Q. Did you devote your attention to any particular question? A. No, not exactly.

Q. You became familiar with the tariff, I suppose? A. Oh, no.

Q. You didn't inquire into that at all? A. No.

Q. Then the reason of your reformation was not the tariff at all? A. No, sir.

Q. You know that that was a great question involved in the last political campaign, don't you? A. I should judge so.

Q. But you went over on an independent issue? A. I did.

Q. What was the issue? A. Nothing particular.

Q. It was not the tariff? A. No, sir.

Q. You are sure of that? A. I am sure of that.

Q. What was the question that drove you from the Democratic party? A. No question in particular, but I simply joined the Republican party of my own free will.

Q. There must have been some reason that actuated you? A. No, none at all.

Q. Just without a reason you joined the Republican party? A. Yes, sir.

Q. Don't you think that was funny? A. No, not to me; it may be to you.

Q. How is it that you were a Democrat before? How is it you had been a Democrat six months prior to the election and then turned over and became a Republican? You want us to understand you had no reason at all for it? A. No reason at all.

Q. And that occurred six months before election? A. Yes, sir.

Q. You have been working as a grainer ever since, have you? A. Yes, sir.

Q. Why did you quit? A. I am working at it to-day.

Q. When do you expect to stop? A. I don't expect to stop at all.

Q. You were appointed one of the Republican Clerks at the Sixth Precinct of the Thirty-third District, were you? A. Yes, sir.

Q. Were you there all day? A. No; half a day.

Q. You were sworn in as a regular Clerk there? A. Yes, sir; I was.

Q. And received your pay as Clerk? A. Yes, sir.

Q. From the Registration Office here? A. Yes, sir.

Q. You were on how long? A. I took the afternoon and he took the forenoon, so we run it off as a six-hour watch.

Q. Who took the forenoon? A. A gentleman by the name of Josephs, I believe.

Q. A gentleman by the name of Josephs took the forenoon and you took the afternoon? A. Yes, sir.

Q. Where did you spend the time after you got off? A. Right around the polling place.

Q. You stood around the polling place all the time? A. I did.

Q. What were you doing around there? A. The County Committeeman, Jones, gave me a challenge book for about half an hour, until he sent a man up to take the book and challenge.

Q. That is all you were doing? A. That is all I was doing, yes; I was standing there.

Q. You didn't ask anybody to vote the Republican ticket? A. No, sir.

Q. Not one? A. No.

Q. You are sure of that? A. Yes, sir.

Q. And just as sure as you are of anything else you have testified to? A. I am.

Q. Don't you think it was a little strange for a Republican Clerk to come out there and take a challenge book and challenge for the Republican party? A. No, I didn't think it was strange at all.

Q. You had been sworn in to faithfully discharge your duties as a Clerk? A. I was.

Q. Notwithstanding that fact, you went outside—— A. [Interrupting.] It was not necessary——

Q. [Interrupting.] But you did it? A. I did it; yes, sir.

Q. You went outside, and acted as a challenger for the Republican party? A. I did.

Q. Under the orders of the Republican County Committeeman? A. Yes, sir; I acted as challenger only for about half an hour.

Q. What did you do all the rest of the time? A. I was around the polling place, partially, and there and around.

Q. What were you doing around there? A. I was doing nothing.

Q. Just standing around? A. That is all.

Q. That was all you had to do, was it? A. That was all I had to do. That was all I wanted to do.

Q. You did not talk with anybody? A. I did not.

Q. You did not mention politics that day? A. I could not say I mentioned politics.

Q. You did not talk with Democrats at all? A. I talked with Doran; yes, sir.

Q. What did you say to him? A. I don't know exactly what I said to him.

Q. You swore awhile ago you didn't say certain things to him. Why do you know that? A. I am positive I did not say it to him.

Q. Why? A. Because it is simply I didn't say it to him.

Q. What did you say to him? A. I can't recollect what I did say to him.

Q. As a matter of fact, you don't recollect what you did say that day to Doran. That is the fact, isn't it? A. Yes, sir; that is the fact.

Q. You didn't have any money up there that day at all, did you? You didn't have a dollar with you? A. No, sir; I didn' have a cent.

Q. Didn't you take a drink once in awhile? A. I did; and I stood the groceryman off for it, too.

Q. Who did you stand off? A. A groceryman, corner of Pacific and Mason.

Q. What is his name? A. Liebsher.

Q. How many drinks did you have that day? A. I had about ten or fifteen, or twenty.

Q. Doran says you were a little drunk that day? A. I don't think so.

Q. A little thing like fifteen or twenty drinks don't bother you at all? A. Oh, no.

Q. They wouldn't affect you at all? A. Not a bit.

Q. You had this conversation with Doran; he said you were a little full; at that time you had about fifteen or twenty drinks in you. Is that true? A. No, sir.

Q. How many did you have? A. At that time I had about four, I should judge.

Q. What made you think you had only about four? A. I drank considerable after I left him.

Q. What time did this conversation occur? A. I should judge as early as nine o'clock in the forenoon.

Q. Wasn't it a little earlier in the day? A. Well, between eight and nine.

Q. Up to eight o'clock you only had four drinks? A. No.

Q. Are you certain you did not tell Doran you were a Democrat, and you had advanced money and you were spending it for Banks? A. No, sir. Mr. Doran asked me: "I understood you were always a Democrat;" and I said "Probably I was; that makes no difference to you or anybody else, does it?"

Q. That is all you said? A. That is all I said to him.

Q. You did not say anything to him about working the Republican ticket at all, did you? A. No.

Q. Didn't you tell him you were aiding the Republican ticket out there? A. I didn't tell him; he didn't ask me the question.

Q. As a matter of fact, didn't you? A. I was working the ticket.

Q. You had the Republican ticket, didn't you? A. Yes. I didn't have Republican tickets, no.

Q. What did you have? Did you have Democratic tickets? A. No, I didn't have the Democrat ticket.

Q. What did you have; the Non-Partisan? A. I voted the straight Republican ticket.

Q. But didn't you tell Doran you were helping the ticket out there that day? A. No, I didn't exactly tell him anything of the kind.

Q. What do you mean by exactly? A. I don't remember of telling him.

Q. You don't remember what you did tell Doran? A. No.

Q. As a matter of fact, didn't you have the Republican tickets in your hand that day? A. I had the Republican tickets in my hand early in the day—about six o'clock—and I gave them to a young fellow there to peddle that day.

Q. And you didn't touch them again? A. No, sir.

Q. You did not take one ticket off the Republican table? A. I might have taken one ticket off the Republican table to vote myself.

Q. After you voted yourself, did you? A. No, sir.

Q. You did not touch them? A. No, sir.

Q. If a gentleman comes and swears he saw you with them, he is mistaken, is he? A. I believe he is.

Q. Don't you know? A. Yes, I know he is mistaken.

Q. You didn't have any Democratic tickets in your possession? A. No, sir.

Q. Did you have any Democratic tickets with Sullivan scratched and Banks written on them? A. No, sir.

Q. And you didn't ask anybody to vote that ticket? A. No, sir.

Q. If anybody says so, they are mistaken? A. They are.

Q. Didn't you ask anybody to vote the Republican ticket that day? A. Oh, no.

Q. You are sure of that? A. Sure of it.

Q. And you did not pay anybody? A. I did not pay anybody; no.

Q. And you did not use any money there that day? A. I didn't have any money to use.

Q. Did you use it? A. I didn't use it.

Q. Didn't you ask anybody to vote, and tell them how much they would get, and refer them to another man? A. No, sir; I did not.

Q. Are you sure of that? A. Yes, sir.

Q. Did you have any talk with William Maxwell before election? A. How long before election?

Q. A couple of weeks before? A. I can remember meeting Maxwell in the saloon down the avenue, and I was pretty full, and he walked up the street with me.

Q. You were pretty full that night? A. I was.

Q. But you were not pretty full when you talked with Doran? A. No, sir.

Q. Do you remember what you said when you were full? A. I do not.

Q. Did you tell Maxwell at that time that you had Banks' money, and that you intended to spend it to secure his election, and that you could not go back on him? A. Not as I recollect.

Q. You would recollect if you told it to him, wouldn't you? A. I would not.

Q. Would you recollect it if you had told him? A. If I had told him, yes, sir.

Q. Do you swear you did not tell him? A. I couldn't say that I could swear that I did not tell him.

Q. You were pretty full that time? A. Yes, sir.

Q. And whatever you said didn't go? A. Yes, that is the idea.

Q. Whatever you said you won't swear to? A. No, sir.

By MR. DORN: If you made any such statement, it is not true, is it? A. What is that?

Q. If you told him any such statement as that it was not true, was it? A. It was not true; no, sir.

Q. And on election day you didn't have a dollar, and you stood the groceryman off for the drinks you had? A. Yes, sir.

By MR. CLUNIE: You did not know Mr. Banks at all, did you? A. Certainly I know him.

Q. How long had you known him? A. I had known by sight, I guess, about four or five years. I know his brothers and went to school with his brothers.

Q. Is that the reason you came from Democrat to Republican? A. No, sir.

Q. When did you meet Banks, and become personally acquainted with him? A. During the Republican Convention. I was Sergeant-at-Arms of the Republican Convention, and I was introduced to him down there.

Q. And you were introduced to Banks there? A. I was.

Q. That was when he was nominated, wasn't it? A. That was before he was nominated.

Q. Did you have any talk about his going to be the nominee for Senator of the Republican party? A. I did not.

Q. Did you wish him success, or anything of that kind? A. No, sir.

Q. You did not say anything about it? A. No, sir.

Q. When did you see Mr. Banks after that? A. I met him about once a week on the street.

Q. Did you stop and talk with him? A. No, he just bid me the time of day.

Q. He bid you the time of day and went by? A. Yes, sir.

Q. Did you see him the first week after the Republican Convention? A. Yes, I believe.

Q. He was then the candidate for State Senator? A. I don't know.

Q. You don't know whether Banks was a candidate for Senator a week before the convention or not? A. No, sir; I do not.

Q. Was it two weeks after the convention? A. I don't know how long after the convention; it is a mystery to me.

Q. You are aware of the fact that he got the nomination after the convention? A. Yes, sir.

Q. After the nomination, did you and he have any talks? A. No, sir.

Q. You have not spoken? A. Yes, sir; we have spoken.

Q. Did you and he have any words? A. No, sir.

Q. You have never been promised any position by him? A. No, sir.

Q. Did you promise to vote for him if he would help you? A. No, sir.

Q. Did you ask him to put you to work? A. No, sir.

Q. Did you ever ask him to put anybody else to work for you? A. No, sir.

Q. Was it understood for anybody? A. No, sir.

Q. Did you ever drink with him? A. I have taken a drink with him occasionally.

Q. Where did you drink with him? A. I don't know exactly myself.

Q. How often have you drank with him? A. About ten or fifteen different times.

Q. Did you go around with him in the district? A. I did not.

Q. You asked your friends to help you, of course, didn't you? A. I did.

Q. A great many of them? A. Yes, a great many of them.

Q. Who did you ask? A. I don't know as I am obliged to answer that question.

MR. DORN: As far as you can remember? A. You want to know all whom I asked?

By MR. CLUNIE: I would like to know just a few. A. I asked a gentleman by the name of Meehan.

Q. Where does Meehan reside? A. He lives Broadway and Taylor.

Q. Did you buy Mr. Meehan? A. No, sir.

Q. Didn't you give him a dollar? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. When did you ask him to vote for him? A. About two or three weeks before election, I guess.

- Q. And he told you he would do it, did he? A. He did.
- Q. Then out of friendship to you? A. He did.
- Q. How long have you known Meehan? A. I have been raised with Meehan.
- Q. How long? A. I have known him about twenty years, I guess.
- Q. And your acquaintance with him has been more intimate? A. Yes, sir.
- Q. Do you live near him? A. I do, about a block.
- Q. And you saw him about three weeks before election? A. Yes, sir.
- Q. Did you see him again? A. Yes, sir.
- Q. And talk with him? A. Yes, sir.
- Q. When? A. Say every day or night before election I would meet him, and talk to him.
- Q. You asked him to vote for Banks? A. I did; yes, sir; and he answered me, and that satisfied me, and I didn't ask him again.
- Q. You asked him to vote for Banks? A. Yes, sir.
- Q. How long before election was the last time that you asked him? A. I couldn't say.
- Q. Didn't you see him on election day at all? A. I did.
- Q. You were not talking with him, were you? A. I was talking with him, yes. He was peddling tickets.
- Q. For you? A. Not for me, no.
- Q. You put him to work, though, didn't you? A. No; the County Committeeman, as far as I can understand, put him to work.
- Q. Weren't you there in charge for the County Committee? A. No, sir.
- Q. You did not do that at all? A. No, sir. I simply interceded for him and got him that job on that day.
- Q. With whom did you intercede? A. Mr. Jones.
- Q. He was a County Committeeman? A. Yes, sir.
- Q. And he put Meehan on at your request? A. Yes, sir.
- Q. You did see Mr. Meehan on election day, then? A. I did; yes, sir.
- Q. He was a little under the influence of liquor? A. No; not exactly.
- Q. He was a little under the influence? A. Well, yes.
- Q. Did you treat him? A. Yes, sir; once, I believe.
- Q. Where? A. Pacific and Mason.
- Q. Whose grocery store? A. Liebsher.
- Q. And you did not pay for that? A. No, sir.
- Q. He bought it? A. No, sir.
- Q. Where did you go to treat him? A. I simply felt like it, I suppose.
- Q. What conversation occurred between you and him when you treated him? A. No conversation whatever; we simple took our drink and he went out to—we had a dry goods box where we had some ballots and tickets on, and he simply went up there and took care of them.
- Q. Did you ask him if he had voted? A. No, sir.
- Q. You did not ask him that question at all? A. No, sir.
- Q. And you didn't ask him whether he voted for your friend Banks or nor? A. No, sir.
- Q. That you are positive of? A. I am positive.
- Q. Think of it, and see if you are sure you did not ask them to vote for Banks on election day? A. No, sir.
- Q. And you did not ask any other of your friends on election day to vote for Banks? A. No, sir.
- Q. Did you know as a matter of fact whether he had voted? A. No, sir; I did not.

Q. Did you go up to the polls and see about that? A. No, sir; I did not.

Q. What is his name? A. Lewis Meehan.

Q. You did not go up to the polls with him? A. I had been around the polling place all day. As far as taking him up there, I did not take him up there; I did not take him up.

Q. You did not walk up with him when he went up? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. Positive? A. Positive; yes, sir.

Q. You are just as positive of that as you are of anything else you have sworn to? A. Yes, sir.

Q. Who is another friend of yours that you asked? A. I asked Dunn.

By MR. DORN: Deputy Sheriff? A. No, sir.

By MR. CLUNIE: Did you ask Jimmy Dunn? A. I asked Henry Dunn.

Q. Did you ask Henry to vote for Banks? A. I did; yes, sir.

Q. And he told you he would do it, did he? A. Yes, sir.

Q. Where did you see him? A. I saw him on the corner there.

Q. Did you see him on election day? A. I didn't, not as I can recollect.

Q. Would you recollect it if you had seen him? A. Well, no.

Q. Did you talk with Henry on election day? A. I did not.

Q. You did not have any conversation with him before he voted? A. No, sir.

Q. You didn't give him any money to vote? A. No, sir.

Q. And you didn't go up with him to the polls? A. No, sir.

Q. Who else? A. I have asked my brother.

Q. Did you ask your brother to vote for Banks? A. I did.

Q. You did not give him the ballot on election day? A. No, sir.

Q. You did not talk to him on election day? A. No, sir.

Q. And you did not go up with him when he voted? A. No, sir.

Q. Who else did you ask? A. Robert Murray.

Q. Where does he reside? A. On Auburn Street.

Q. How much did you offer him? A. I didn't offer him a cent. I didn't offer anybody anything.

Q. Do you know a man named Joyce? A. Yes, sir.

Q. You talked with him a little, didn't you? A. Yes, I did; I asked him.

Q. And you asked him to vote for Banks? A. Yes, sir.

Q. You didn't say anything to him about money? A. No, sir.

Q. You didn't tell him where he could find any money, if he voted that way? A. No, sir.

Q. Did you treat him at all? A. I couldn't tell you if I did or not.

Q. You didn't have any money on election day, did you? A. I did not.

Q. If you treated him, that must have been charged, too, in that saloon? A. Yes; I had money after noon time. That was when I was stationed inside.

Q. Where did you get the money? A. I got it from Banks.

Q. That was the man that was running for Senator? A. I got it from him to pay them people for peddling tickets.

Q. You got money from Banks on election day, then, didn't you? A. I got that money from Banks to pay the peddler and challenger.

Q. You got that money from Banks to pay the peddler and challenger, and you went and treated Joyce on it? A. I did not treat Joyce on any money of that kind at all.

Q. Then if you treated Joyce you must have treated him and had it charged at Liebsher's? A. I didn't swear I treated Joyce.

- Q. You did treat him, didn't you? A. I don't recollect it.
- Q. If you did treat him, you must have treated him there, didn't you?
- A. No, I might have treated him at some other saloon.
- Q. Whereabouts? A. On Salmon Street.
- Q. You must have had an account there, then? A. No, sir. I don't know as I drank there.
- Q. You don't know where you drank before, do you? A. I know one particular place.
- Q. Did you drink in the Salmon Alley saloon? A. I believe I was treated there myself.
- Q. Who treated you? A. That I can't remember.
- Q. You say you were treated there? A. Yes, sir.
- Q. But you didn't treat Joyce there, you say? A. I don't know whether I did or not.
- Q. You say you got this money from Banks to pay the people that were inside; is that it? A. People that were outside.
- Q. Who was outside that you had to pay? A. There was William Golden, he was challenging.
- Q. He was appointed by the Republican Committee, wasn't he? A. No, sir; not exactly.
- Q. What do you mean by not exactly? A. Yes, Jones asked me to get him a man to take charge of the challenge book that day.
- Q. Jones is the Republican County Committeeman? A. Yes, sir.
- Q. He asked you to do that? A. Yes, sir.
- Q. Then you went and got this Golden? A. Yes, sir; I did.
- Q. And Banks gave you money to pay it? A. Yes, I asked him to pay the people that because I didn't think I would see Jones that day.
- Q. Why should Banks have to pay them? The Republican Committee had got them, hadn't they? A. I did not know that.
- Q. You said Jones, the Republican County Committeeman, had told you to get these people? A. Yes, and I couldn't find Jones in the afternoon, and I thought I would make sure by asking Banks for it.
- Q. Don't you know Jones was up there very often that day? A. I saw him once or twice.
- Q. About what time did you get this money? A. Between twelve and one, I should judge.
- Q. Hadn't Jones been up there before that? A. Yes, sir.
- Q. You didn't ask him for the money to pay this man, did you? A. No, sir.
- Q. And you had to get it from Banks? A. No; simply asked Banks for it to pay these people that I didn't want to see them running around all night to get it.
- Q. You hired Golden, didn't you? A. I did.
- Q. Who else did you hire? A. Meehan.
- Q. You hired Meehan? A. No; I didn't hire him, but referred him to Jones. Jones hired Meehan.
- Q. You swore a moment ago that you hired him, didn't you? A. No; I swore I interceded for him with Jones.
- Q. And you paid Meehan, didn't you? A. No; I didn't pay Meehan. Meehan was paid by the County Committeeman.
- Q. Did you swear a minute ago that you paid him? A. No, sir: I swore I got money to pay Meehan and Golden, and I swear I paid Golden, and not Meehan.
- Q. Then you got money to pay him, and did not pay him; is that it?
- A. That is it.

Q. How much did you get? A. \$10 to pay the both of them, and I referred Meehan to Jones, and Jones paid him, so he got his \$5.

Q. You got \$10 to pay the both of them, and you referred Meehan to Jones, and Jones paid him, so he got his \$5, and you kept the \$5? A. I did.

Q. What did you do that for? A. I generally pick up all the loose change that is running around.

Q. Weren't you around that day picking up loose change? A. I was not.

Q. Did you find any more laying around? A. I did not.

Q. All you found was \$5? A. Yes, sir.

Q. All you got from Banks was \$10? A. Was \$10.

Q. You are sure of that? A. I am positive of that.

Q. And you told him you were getting it to pay Golden and Meehan? A. I did.

Q. All of these people you got to vote for Banks, did you? A. I did.

Q. They were all Democrats, weren't they? A. I don't know whether they were or not.

Q. Don't you know Meehan's politics? A. I do not. This was his first vote.

Q. Hadn't he told you before that he was going to vote for the Democratic nominee? A. No, sir.

Q. Why did you ask him to vote for Banks? A. I don't know why, but I said Banks was a friend of mine, and simply asked him to vote for him, and I didn't know his politics.

Q. How long had you known Banks? A. That is, his folks were.

Q. How long had you known his folks? A. We went to school together.

Q. How long had you gone to school with his folks? A. Not with his folks, but his brothers.

Q. You said his folks were friends of yours? A. Yes, sir.

Q. What did you mean by that? A. Well, his brothers.

Q. And you went to school with his brothers? A. Yes, sir.

Q. And on account of having gone to school with his brothers, you asked these people to vote for him, did you? A. Yes, sir; because they asked me.

Q. Who were they? A. I can't exactly recollect who asked me, but I had no particular choice on the ticket at all; I was working the whole ticket.

Q. How many brothers has Banks? A. He has got two, I think.

Q. You went to school with him, didn't you? A. Yes sir, I did.

Q. What school? A. The Washington Grammar.

Q. How long ago was that? A. It is about ten or eleven years ago.

Q. Who was the teacher? A. I had three or four teachers in that school.

Q. Who was the one who taught you and Banks? A. I believe Mrs. Lamb, or Mr. Lambert.

Q. Which one of the Banks was it that was with you? A. Roddy Banks.

Q. How old is Roddy? A. I don't know.

Q. How old was he when he went to school with you? A. I don't know; I never knew his age.

Q. Was Roddy a little boy when he went to school with you? A. No, he was not.

Q. How old is he now? A. I don't know the man's age.

Q. Where does he live now? He lives now on Sacramento Street, between Leavenworth and Jones Streets, I believe.

Q. How long has he lived there? A. I don't know.

Q. Do you know where Roddy voted from? A. No, sir.

Q. Was Roddy the one that asked you? A. Roddy? No.

Q. Then it must have been the other one, wasn't it? A. It wasn't the other one.

Q. He had two brothers, and you say they asked you to vote for Mr. Banks. Now, it was not Roddy or the other one; who was it, now? A. Nobody asked me to vote for Mr. Banks.

Q. Then you were wrong a little while ago when you said somebody asked you to do it, and you did it? A. I was asked to when I put these people to work. Golden asked me to put him to work. I didn't understand your question.

Q. I asked you why you were working for Banks, and you told me that his folks asked you; are you a little deaf? A. I am.

Q. And you don't understand my question, do you? A. No, sir.

Q. And that is the reason you answer them the way you have? A. Yes, sir.

Q. Why did you work particularly for Banks? A. Because I felt like it.

Q. What caused you to feel that way? A. Knowing his brother.

Q. And it was just because you knew his brother that you went around and asked these half a dozen people to vote for Mr. Banks; is that it? A. That is it.

Q. That is the only consideration you had? A. That is all.

Q. When had you seen his brothers before that? A. I have seen them off and on for years.

Q. When did you last talk to his brother? A. I believe the last time I talked with the brother was yesterday.

Q. Prior to the election when did you talk with him last; or, before the election, how long was it? A. I don't know.

Q. Was it a year? A. No; I think it was going on only around the Republican primaries.

Q. Where did that conversation occur? A. Washington and Leavenworth.

Q. When had you seen him before then? A. I have seen him off and on for years.

Q. Have you been rather intimate with him? A. Yes, sir; we are.

Q. How intimate; do you call at each other's houses? A. No, sir.

Q. Did you ever meet in business? A. No, sir.

Q. Had you ever spent ten minutes with him since you left school, prior to the time you exhibited this great friendship with him, and got in and worked with his brother? A. I have.

Q. Where? A. Wherever I would meet him.

Q. Where? A. Washington and Leavenworth was the principal place.

Q. When? A. Two or three months ago.

Q. What conversation did you have with him? A. Talking over old times, I suppose, what conversation I had with him.

Q. Did you say anything about his brother then? A. I did not.

Q. Did he tell you his brother was going to be a candidate for Senator? A. He did not.

Q. When did you see him after that? A. I saw him at Washington and Stockton.

Q. What did you say to him then? A. I didn't say anything to him.

Q. Which brother is this? A. This Roddy or Roderick; I don't know which. They call him Roddy.

Q. You were very intimate with this man? A. Yes, sir.

Q. So intimate that you were going out of your way to hunt up men to vote for his brother? A. Yes, sir.

Q. You were old school acquaintances? A. Yes, sir.

Q. And you don't know his name? A. I have forgotten it. There are lots of people I know in this town, and I don't know their first name.

Q. What is his nickname? A. Roddy. I don't know whether that is his nickname or his right name.

Q. You talked with him where? A. Leavenworth and Washington, and Washington and Stockton.

Q. Who was present when you had this talk? A. There might have been a dozen.

Q. Can you name some of them? A. Yes, sir.

Q. Name them. A. McLane, McFarland, Mr. Creamer—there were two or three Creamer brothers, and two or three McLanes.

Q. And they heard of you, and Roddy renewed your old acquaintance; is it? A. Yes, sir.

Q. Where did you see him after this second conversation? A. Washington and Stockton.

Q. When was that? Was that after the nomination of his brother? A. No, sir. I saw him before at Washington and Stockton, and I saw him there after the election, at Washington and Stockton.

Q. After he was nominated and before the election, did you ever see Roddy, then? A. I believe so.

Q. Did you and Roddy have any talks? A. No, sir.

Q. Did Roddy give you any money to help you along? A. No, sir.

Q. Never a cent? A. No, sir.

Q. Did Roddy tell you what he would do for old acquaintanceship if his brother got elected? A. He did not. I just did it my own self.

Q. You just did it of your own free will? A. Yes, sir.

Q. You did not talk with the Governor about this matter, did you? A. No, sir.

Q. He did not send for you? A. No, sir.

Q. You were a reformed Democrat? A. I was.

Q. You didn't run up and interview Governor Waterman about it? A. No, sir.

Q. Did you meet Mr. Higgins? A. No, sir.

Q. Did you inform Mr. Higgins about it? A. No, sir.

Q. You knew Mr. Higgins, did you not? A. I do not. I have seen him, but I have never spoken to him.

Q. You have heard of him? A. I have heard of him; yes, sir.

Q. And you have never seen Governor Waterman? A. I have not.

Q. Did Mr. Banks ever tell you about the friendship the Governor had for him? A. No, sir.

Q. He never related that? A. No, sir.

Q. Did he tell you about Mr. Higgins' friendship for him? A. No, sir.

Q. Did he tell you that when he got in as Senator he expected to control a great deal of patronage? A. No, sir.

Q. Nothing of the kind ever occurred? A. No, sir.

Q. And you swear you did not give anybody a dollar on election day to vote? A. Yes, sir.

Q. And you swear you were not there to do that? A. Yes, sir.

Q. And you didn't do that? A. I swear I didn't pay anybody to vote.

Q. Do you swear you did not do it after they got away? A. No, sir.

Q. Did you ever do anything that leaned that way? A. No, sir.

Q. Did you ever make anybody a present of money in consideration of having voted? A. No, sir.

Q. Did you ever inquire how a man had voted and then make him a present? A. No, sir.

Q. Did you tell anybody that in consideration of voting, you would give them a present? A. No, sir; I did not.

Q. If Mr. Doran and if Mr. Maxwell swear you made this statement to them, that is not correct, is it? A. Not as I can remember. If I did say it, I don't recollect it, and if I stated it, it is a lie.

Q. Are you in the habit of running around lying to people? A. I josh anybody. I don't recollect ever telling anybody.

Q. But you are in the habit of joshing that way? A. Yes, sir.

Q. And you think that is quite a josh? A. Yes, sir.

Q. Do you know a man named John Feeney? A. Yes, sir.

Q. Did you have a little josh with him? A. I did.

Q. What did you tell him? A. I told him pretty near the same thing.

Q. What did you tell him? A. I don't remember what I told him.

Q. You told him pretty near the same thing? A. I suppose I did.

Q. You swore you told him pretty near the same thing, didn't you? A. I suppose I did.

Q. What did you mean when you swore a minute ago that you didn't know what you told him? A. I don't know. You know you are getting the best of me.

Q. And you don't know what it was? A. I do not.

Q. Will you swear you did not tell Johnny Feeney you had Banks' money, and were using it to help him to be elected Senator from the Twenty-first District? A. Not as I know of.

Q. Are you positive you did not? A. I couldn't say, because I was drunk that day.

Q. Whatever you said that day, you were drunk; is that it? A. Not exactly drunk, but I had a few drinks in.

Q. What day was that? A. I don't know; I suppose it was on election day, wasn't it?

Q. Are you drunk every day? A. No, I don't think I was. I drink considerable every day, though.

Q. And that day you had these conversations, no matter what it was, you had been drinking considerable; is that the way you want it to go on record. A. I suppose so.

Q. Did you know anybody up there that was giving Banks' money away? A. I do not.

Q. Do you know a man named Arnold? A. Yes, sir.

Q. Did you have a little talk with him? A. Yes, sir, I suppose so.

Q. Another little josh? A. Yes, I suppose so.

Q. Did you tell him if he would get in and vote for Banks you would steer him up where he could get some money? A. No, sir.

Q. You had a talk with him, didn't you? A. I don't know whether I did or not.

Q. Did you have any talk with him before election? A. No, sir; I don't know as I ever did. I had talks with him, but not on that proposition.

Q. If Mr. Arnold says that you told him before election that if he would vote for Banks, you would steer him up where he could get some "stuff" as he called it—you would do it? A. No, sir.

Q. Are you positive? A. Yes, sir; I am positive.

Q. You are positive you never had that conversation? A. Yes, sir.

Q. What was it? A. I don't know.

Q. You had some conversation? A. No; I don't know whether I did or not.

Q. You have never talked with that man? A. Oh, yes, sir.

Q. Did you ever talk with him on that subject? A. No, sir.

Q. Did you ever talk with him on the subject of Mr. Banks? A. I would not swear I did not.

Q. You don't know what you did say? A. No.

Q. You may have been drunk at that time? A. Probably; yes.

Q. And you think it may have been very likely you may have made some statement to him when you were drunk, joshing him? A. It might have been. I don't know.

Q. Do you know a man by the name of Elliot? A. Elliot; yes, sir.

Q. He is a personal friend of yours, isn't he? A. He is; yes, sir.

Q. He got in a little trouble here awhile ago, didn't he? A. Yes, sir.

Q. Burglary? A. No; no burglary.

Q. Highway robbery? A. Yes, sir, I believe it was robbery.

Q. You were down there for him? A. No, not exactly. I went on the stand for him.

Q. You swore for him? A. I did.

Q. That helped considerable, didn't it? A. Not as I know of. It didn't look that way.

Q. What did you swear to, to his character? A. No, sir.

Q. You swore for this man Elliot in the Police Court, did you not? A. Yes, sir.

Q. He was held over? A. Yes, sir; he was.

Q. Not because you swore? A. No, sir.

Q. Did you ever go to Mr. Banks on behalf of Elliot? A. I did not.

Q. Do you know George Williams? A. I do.

Q. Did you have a little talk with him? A. I did.

Q. About this man Elliot? A. I did.

Q. Mr. Williams was pretty close to Mr. Banks, was he not? A. Not as I know of. I know that he knows him; that is about all. I don't know that he was close to him.

Q. Don't you know Mr. Williams took a great interest in Banks' fight? A. No, sir.

Q. Don't you know that he was fighting for him? A. No, sir.

Q. Don't you know that he was paying people to work for him? A. No, sir. I would have been after Williams myself if I had thought he had it.

Q. Why? Were you looking for money? A. No, not exactly.

Q. Why should you have been after Williams, then? A. Well, I couldn't say. I would have been after him to speak to him; that is all.

Q. And if he hadn't had any money, you wouldn't have wanted to have spoken to him? A. No, sir.

Q. Are you in the habit of speaking to people on election day when you ask a man to vote and give him \$2 50; is that what you call speaking to him? A. No, sir.

Q. Did you do any of that kind of speaking on election day? A. I did not.

Q. Tell us what you said to Elliot? A. I don't know as that is necessary.

Q. Tell us what you did for Elliot? A. If Mr. Dorn says so.

Q. Mr. Dorn wouldn't say so for the world.

MR. DORN: If it has no relevancy, I suggest he do not answer it.

THE WITNESS: I don't think it has got anything to do with the case.

- By MR. CLUNIE: Just tell us what you did with regard to Mr. Elliot?
- A. I was simply a witness for him; that was all.
- Q. What do you know about a highway robbery? A. I know that I happened to be in Elliot's company that evening.
- Q. You were not robbing people that evening? A. No, sir; I was not.
- Q. But you were in his company there? A. I was not.
- Q. You were in his company there, you say? A. I was in his company that evening.
- Q. You were with him robbing? A. I was not.
- Q. What did you swear to? A. I swore that I was in Elliot's company at the time that the robbery was committed.
- Q. And the Police Court differed with you, didn't they? A. I don't know.
- Q. They didn't believe you, did they? A. It looked that way.
- Q. The charge against Elliot was highway robbery? A. It was.
- Q. You went on the Police Court stand and swore you were with Elliot at the time the robbery was committed? A. Yes, sir; I simply swore Elliot was with me at the corner of Washington and Leavenworth.
- Q. At what time? A. I left him at twelve o'clock. We were up there all the evening.
- Q. What time did they claim the robbery had been committed? A. Round them hours.
- Q. Before what Judge did you swear to that? A. Before Judge Sullivan.
- Q. And Judge Sullivan, as soon as you swore to that, convicted the man, or held him to answer? A. I guess not.
- Q. What did they do? Did the jury convict him? A. I guess so.
- Q. And there were twelve men convicted him in the face of your statement? A. I don't know whether they did or not.
- Q. They convicted him after you had that swear, didn't they? A. I don't know.
- Q. You don't believe in your mind that the jury believed you, do you? A. It appears they did.
- Q. Just tell us what you did for Mr. Elliot when he was convicted? A. I did not do anything.
- Q. You quit, then, did you? A. I quit; yes, sir.
- Q. You had no further interest in the matter? A. Yes, sir.
- Q. When was Elliot convicted? A. I don't know exactly when he was convicted.
- Q. Was it before or after election? A. It was after election.
- Q. You talked with Williams about the case, didn't you? A. I don't know whether I did or not.
- Q. Elliot was in trouble before election, wasn't he? A. He was.
- Q. And the examination in the Police Court took place before election, didn't it? A. I believe so.
- Q. Prior to the time of that examination, at the time of the examination in the Police Court, had you talked with Mr. Williams about the case? A. No; I just simply asked Mr. Williams if he could go and intercede and get Elliot in the hospital (he had a sore leg), and he said he would try.
- Q. Who did you want to intercede for? A. Elliot.
- Q. Who with? A. I asked Williams if he would intercede for him, getting Elliot in the Receiving Hospital.
- Q. Who did he intercede with? A. I never asked him to intercede with; but I asked him to use his influence getting this man into the Receiving Hospital. That was all the conversation I had with Williams.
- Q. Did you ever talk with Banks about Elliot? A. I did not.

Q. Did you every talk with Williams about getting a pardon for him?
A. No, sir.

Q. Did you ever go to Banks and ask him to sign a petition for pardon?
A. No, sir.

Q. And you never went to Williams? A. No, sir.

Q. And it was not in consideration of that that you gave your services to Banks? A. I did not.

Q. You are sure of that? A. I am sure of it.

Q. Do you know whether, as a matter of fact, Banks interested himself for Elliot one way or the other? A. I do not.

Q. You never heard anything about that? A. No, sir.

Q. Did Elliot ever tell you Banks was going to help him out? A. No, sir.

Q. Did you ever tell Elliot that Banks was your friend? A. No, sir.

Q. Do you remember meeting Maxwell in the City Hall corridor when Elliot was held to answer in the Police Court? A. I don't know.

Q. Didn't you meet Maxwell? A. I don't remember.

Q. Just think for a moment? A. No, sir; I don't recollect ever seeing him on that day. I might have seen him, and I might not.

Q. Didn't you meet Maxwell on that day, in the corridor of the City Hall? A. Of which City Hall, the Old City Hall or the New City Hall?

Q. The Old City Hall. You knew he was held down in the Old City Hall, didn't you? A. Yes, sir.

Q. Didn't you meet Maxwell down in the corridor of the Old City Hall the day that Elliott was held, and didn't you tell him it would be all right: that Banks could get him out, and that Banks and Williams were your friends? A. No, sir.

Q. Do you swear positively to that? A. Yes, sir.

Q. Do you swear positively that that did not occur? A. Not as I can recollect. I don't remember ever having any such conversation as that with Maxwell.

Q. If you did have it, you would have remembered it, wouldn't you?
A. I suppose so.

Q. Do you know whether Elliott was in jail at the time of election?
A. Yes, sir; he was in jail.

Q. He had been all the time prior to that for how many months? A. I don't know.

Q. Where did he live; do you know? A. He lived on Sacramento Street.

Q. Elliott was a Democrat, was he not? A. No, sir.

Q. He was a Republican, wasn't he? A. He was. He is a member of the Morrow Invincibles.

Q. He is a member of the Morrow Invincibles and he was in jail? A. I don't know how long he was in jail. He was then, and after the election.

Q. Was it a month before? A. I don't know.

Q. Was it three months before? A. I don't know.

Q. Was it four months before? A. I don't know. I don't know how long; he is there now.

Q. Don't you know that, as a matter of fact, Elliott was in jail at the time that the registration opened at the New City Hall for election? A. That he was in jail then? No, sir; because he registered from the City Hall.

Q. How do you know that? A. Because he told me he did.

Q. He told you he registered from the New City Hall? A. Yes, sir.

Q. How did he come to tell you that? A. I met him on the street, and he said he had been out registering.

Q. What date was that? A. I don't know what date or day.

Q. Then you do know that he was in jail a few months before election, don't you? A. Yes, sir.

Q. Where did he register from? A. I don't know. From his house, I suppose.

Q. Whereabouts? A. Sacramento Street.

Q. Whereabouts on Sacramento Street? A. Between Jones and Leavenworth.

Q. No. 1613, wasn't it? A. I don't know.

Q. Did he go to school with you and this man Roddy Banks? A. I don't recollect. He went to school with me; I don't know whether he was with Banks or not.

Q. Did he and Elliot live together? A. No, sir.

Q. You knew where Elliott lived, didn't you? A. No, sir. He told me he lived on Sacramento street; that is all I know about it.

Q. Did you ever go up to see Elliot at his house? A. I would go up to him on that block.

Q. That block between what streets? A. Between Jones and Leavenworth.

Q. Did you see your friends Jones and Roddy when you went there? A. Yes, sir.

Q. Did Roddy live with him? A. I don't know.

Q. If Roddy had lived with him, wouldn't you know it? A. No.

Q. If Roddy had lived in the same house with Elliot, don't you think you would have known it, you all going to school together? A. I didn't ask him where he lived.

Q. You didn't see him in that house? A. No, sir.

Q. But you called to see Elliot there? A. I met Elliot in that block, and before I met him in that block I asked him where he was living, and he told me he lived on Sacramento Street.

Q. You never met him at the corner of the block? A. I have met him at the grocery store at the corner of the block.

[Here the witness was temporarily withdrawn, and the further hearing was continued until to-morrow morning at ten o'clock.]

SIXTH DAY.

SAN FRANCISCO, CALIFORNIA, }
TUESDAY, January 8, 1889—10 o'clock A. M. }

Present: Justices Stafford and Boland, the contestant and respondent, the counsel for contestant, and Mr. Dorn, of counsel for respondent, and Thomas R. Knox, official reporter.

Mr. DORN: If your honors please, Mr. Sullivan is not willing to consent to a continuance. I am not in condition to be in Court nor to do any business at all to-day. I state to your honors—and I think my word ought to be taken in the matter—that I am unwell, and am not able to proceed in the matter. If your honors cannot continue it until to-morrow, I will ask you to continue it until this afternoon at two o'clock. It is simply that I am not able to go on, and if I am not able to go on at that time, I will have

somebody here. If Mr. Clunie will not agree to it, I believe your honors ought to continue it. I do not think this is so much different from any other case that your honors cannot continue it as you would such a case.

MR. CLUNIE: Mr. Dorn spoke to me about this, but I told him I had been instructed by Mr. Sullivan to proceed without delay, and I cannot consent to a continuance under the circumstances, as the Legislature has already met, and if we do not finish the testimony this week, it will go over another week, and we want to get it finished and go before the Legislature.

JUSTICE STAFFORD: I think the request entirely reasonable and the matter may stand over until two o'clock.

MR. DORN: I will state now that I will either be here myself, prepared to go on, or to have somebody here in my place.

[Here the further hearing was continued until two o'clock P. M.]

AFTERNOON SESSION.

JAMES LYNCH.

Recalled as a witness on behalf of respondent for further cross interrogatories.

MR. CLUNIE: I have no more questions.

Redirect Interrogatories.

By MR. DORN: You were asked yesterday if some time prior to the election you had not met Mr. Maxwell here, this gentleman sitting next to Mr. Clunie, and if, when you met him, you did not have a conversation with him, in which you said something about having Banks' money. Answer—Not as I can recollect. The only time I can recollect ever seeing Maxwell was at Broadway and the Avenue, and I was pretty full, and he walked up the street with me.

Q. At the time you met him, did you make any such statement to him? A. No, sir; not as I can recollect.

Q. Did you ever make any such statement to Mr. Maxwell? A. No, sir.

Q. As a matter of fact, did you before election, or at any other time, have any of Mr. Banks' money to work for him or vote for him? A. No, sir; not a cent.

Q. And if any such conversation was testified to as being had, do you say it is not correct? A. No, sir; not in my estimation.

Q. You were asked yesterday if you had a conversation with Mr. John Feeney, in which you made a statement that you had Banks' money, and that you were going to work for him therefor. Did you ever have any such conversation with Mr. Feeney? A. No, sir.

Q. Did you ever make any such statement to Mr. Feeney at any time? A. No, sir.

Q. If Mr. Feeney, or any other person, testifies that you did make such a statement, their testimony would not be true? A. No, sir.

Q. At the last election you were a member of the Morrow Invincibles, were you not? A. I was.

Q. You testified that on election day Mr. Banks gave you \$10 to pay two men? A. Yes, sir.

Q. At the time Mr. Banks gave you that \$10 do you know whether or not he was a member of the Republican County Committee? A. I believe he was.

Q. Don't you know, as a matter of fact, that Mr. Banks, at the last election and up until the first day of this year, was a member of the Republican County Committee over in the Twenty-first Senatorial District? A. Yes, sir.

Q. Wasn't it the practice of both the Republican and Democratic County Committees at this and, in fact, at all elections, to hire men to peddle tickets for their respective parties, to look out for the tickets, and as challengers, and so forth? A. Yes, sir.

Q. And the two men that you hired and that Mr. Banks gave you the money to pay were employed in that capacity, were they? A. Yes, sir.

Q. And the money received by you from Mr. Banks was received from him as a member of the Republican County Committee, to pay them with? A. Yes, sir.

Q. Was that \$10 which Mr. Banks gave you to pay those men for the purpose of buying their vote in favor of Mr. Banks, or was it simply to pay for their work done by agreement? A. Simply to pay for the work.

Re-cross Interrogatories.

By MR. CLUNIE: You turned out with the Morrow Invincibles during the campaign, did you not? A. Not all the time. My feet were affected.

Q. How were they affected? A. With corns.

Q. With corns? A. Sure.

Q. And on account of your corns, you did not turn out with them, did you? A. No, sir; I did not.

Q. You did not turn out with the Democrats? A. No, sir.

Q. Do you know the old Ninth Club there? A. Yes, sir.

Q. Did you turn out with them? A. No, sir.

Q. Do you know Mr. Kenney over there? A. Yes, sir.

Q. Did you get a Captain's outfit from him? A. Yes, sir.

Q. What did you get that for? A. To give it to some other person. I got a cap and shirt.

Q. What did you get that for? A. Just for instance.

Q. What do you mean by that? A. Just because I wanted to.

Q. Didn't you tell them you were going to turn out? A. I don't know as I did.

Q. Didn't you ask them for a uniform? A. I just got a cap and shirt.

Q. You didn't tell them you intended to turn out? A. I don't know whether I told them I intended to turn out or not.

Q. You didn't tell them you had any such intention? A. I did not.

Q. Was there any money paid to the election officers on the inside of the Board for services rendered by them to Mr. Banks? A. Not as I know of.

Q. Would you have known it if it had been paid? A. I would.

Q. Don't you know, as a matter of fact, that Mr. Banks gave each of the officers of the precinct you were in three or four dollars extra? A. No, sir.

Q. You don't know that at all? A. No, sir.

Q. You are positive, as you testified yesterday, are you, that at no time you spoke to or asked any one to vote on election day, nor did you give them any tickets? Did you give any one a ticket or ask any one to vote

for any ticket? You are positive of that, are you? A. I asked my friends to vote for Banks.

Q. On election day? A. Yes, sir.

Q. Then, when you swore yesterday you had not asked your friends to vote for Banks, or had not given them a ticket, your statement was not true, was it? A. I didn't testify no such thing.

Q. Do you say you didn't testify that way yesterday? A. No, sir. You asked me the people who I asked to vote for Banks, and I named them for you.

Q. Was this question asked you yesterday: "Q. What were you doing around there?" A. The County Committeeman gave me the challenge book for about half an hour until he sent a man up to take the book and challenge." Was that question asked you, do you remember? A. Yes, sir.

Q. Was this question asked you: "Q. That is all you were doing?" Was that question asked you? A. Yes, sir.

Q. And did you reply: "A. That was all I was doing. Yes, sir; I was standing there." Was that asked you? A. Yes, sir.

Q. Was this question asked you: "Q. You did not ask anybody to vote the Republican ticket?" A. Not the whole ticket.

Q. Was that question asked you? A. I believe so.

Q. How did you answer on that? A. It is a mystery to me. Read it and I suppose you will find out.

Q. I am not reading it. I asked you what you swore to. A. I don't know as I have asked anybody to vote the whole Republican ticket; I simply asked them to vote for one individual.

Q. I asked you how you swore yesterday on it. A. That I cannot recollect.

Q. You swore to the truth, didn't you? A. I did; I suppose I did, certainly.

Q. Did you ask anybody to vote the Republican ticket that day? A. Not as I know of.

Q. Don't you know if you did or not? A. Not the ticket.

Q. You didn't ask anybody to vote the ticket at all? Are you sure, now? A. I am pretty positive; yes, sir.

Q. Did you or did you not? I want to hear how you are swearing today. A. I can't say whether I did or not; I can't recollect.

Q. Was your recollection better yesterday? A. No, sir.

Q. Did you ask anybody to vote the Republican ticket? A. I don't know as I did.

Q. Will you swear you did not? A. I wouldn't swear that I did not or that I did.

Q. You won't swear any way? A. No, sir.

Q. Didn't you say so when I asked you if you asked anybody to vote the Republican ticket? Didn't you say so? A. No, sir; not as I know of.

Q. Then, that is a mistake that is in the reporter's notes, is it? A. Probably.

Q. Did you swear that yesterday? Is that correct? A. I don't know as it is.

Q. Which is it? A. I am not positive.

Q. You won't swear whether you swore that or not? A. No, sir.

Q. You ain't positive at all about it? A. No, not on that question.

Q. Here are some more questions: "What were you doing around there?" Was that question asked you yesterday? A. I believe so.

Q. Did you answer: "A. I was doing nothing." A. Yes, sir.

Q. Was this question asked you: "Q. You were standing around?"
And did you answer: "A. That is all?" A. I believe so.

Q. Was this question then asked you: "Q. That was all you had to do, was it? A. That was all I had to do, and it was all I wanted to do?"
Is that the fact? A. Up until twelve o'clock.

Q. I ask you whether that question was asked you? A. That might be the fault of the reporter.

Q. That is two faults we have found on a page with the reporter? A. No, it is one; that is all I had to do in the forenoon.

Q. Then, you swear that you did not swear to that yesterday, do you? Do you swear you did not say that yesterday? A. I don't know whether I did or not.

Q. Don't you remember what you swore to yesterday? A. You people were talking a little bit hastily yesterday, and I am a little bit deaf, and probably I got tangled up on the questions.

Q. You got tangled on the questions? A. Probably, yes, sir.

Q. You did not understand them? A. Well, mostly. You had to repeat a good many of them, too.

Q. Then, you could not have been mistaken about the questions? A. Probably.

Q. Then, you swore you were doing nothing? A. I swore I was there during the forenoon and he relieved me. I took the afternoon shift and he took the forenoon.

Q. Can't you remember now? A. I can't.

Q. Was this question asked you: "Q. You didn't talk to anybody?"
Was that question asked you? A. I believe so.

Q. Did you answer: "A. I did not." A. I did not; no, sir.

Q. You did not answer that way; that is another mistake of the reporter? A. I have talked to considerable people.

Q. I think you did; and I think you were mistaken yesterday in your swearing. I want to find out whether you did or not. You didn't swear to that; is that it? A. I probably talked to fifteen or twenty of my friends on election day.

Q. I understand that; but did you swear in reply to this question: "Q. You did not talk with anybody?" and answer, "I did not." Answer that, yes or no. A. I don't know whether I did or not.

By MR. DORN: When you made that answer, did you understand the question? A. Probably I did not understand the question.

By MR. CLUNIE: You swore a minute ago that that question was asked you, didn't you? A. I don't know whether I answered it or not, to that effect.

Q. You don't remember how you answered it? A. No, sir.

Q. You understood the question, didn't you? A. I did.

Q. And you don't remember about having answered it? A. No, sir.

Q. There is no question about your understanding that you were asked that question? A. I suppose so.

Q. If that appears in the reporter's notes, your impression is that the reporter is wrong, is it? A. That is it.

Q. "You didn't mention politics that day?" Was that asked you? A. I didn't mention it.

Q. "You didn't mention politics that day?" Was that question asked you? A. I don't recollect.

Q. You don't recollect whether it was asked you or not? A. No, sir.

Q. And didn't you answer, "I couldn't say I mentioned politics?" A. I don't recollect.

Q. Who told you to say you didn't recollect to-day to all these questions, Mr. Banks? A. No, sir.

Q. You talked with Mr. Dorn, didn't you? A. I did.

Q. Did he tell you to get forgetful once in awhile and not recollect? A. No, sir.

Q. You are sure of that? A. Sure of it.

Q. How is it you recollected yesterday and don't recollect to-day? Did you get drunk last night? A. I did not.

Q. You are in just as good condition to-day as you were yesterday? A. No, sir.

Q. You are a little worse off? A. No, sir.

Q. What is it then? A. My memory is a little fresher to-day than it was yesterday.

Q. And still you forget things. How can that be? A. Well, it is a mystery.

Q. You say your memory is fresher to-day than it was yesterday? A. Yes, sir.

Q. Now, you say you don't remember one or the other—how you swore it? How do you account for that? A. It is a mystery to me.

Q. You say you did have the Republican tickets on election day; you swore a minute ago, didn't you? A. No, sir; I didn't have the Republican tickets, but I had a man there attending to the Republican tickets.

Q. I asked you if you had any Republican tickets in your hand on election day? A. No, sir.

Q. You swear to that now? A. Yes, sir.

Q. You are positive? A. Positive. I didn't have any but my own.

Q. Which one? A. The one I voted.

Q. And you are positive you didn't have any in your hand except the one you voted? A. Yes, sir.

Q. And you didn't have any in your hand for Banks, to give to your friends? A. No, sir.

Q. When you and Mr. Maxwell had this conversation, you say you were under the influence of liquor, weren't you? A. I didn't say exactly I was; probably I was.

Q. You were pretty close to it, weren't you? A. I don't know whether I was or not.

Q. What was your condition? A. I couldn't explain it to you, probably.

Q. Couldn't you try? A. I have been in that condition often.

Q. You have been in that condition often? A. That is, I have had a few drinks in me often. I get a little boisterous when I get a few drinks into me.

Q. What condition do you get into when you get in that condition? A. In a jovial condition, and josh at everybody I meet.

Q. And you were in a jovial condition when you met him? A. Probably I was. I don't remember the time of day I met him, whether it was day or night.

Q. And you don't recollect anything about it? A. No, sir.

Q. You don't know what was said there? A. No, sir; I don't know that what Maxwell claims I said to him.

Q. You don't recollect anything, do you? A. Not what conversation Maxwell and I had, no, sir.

Q. And you don't remember anything about what was said there? A. I can recollect Maxwell walking up the street with me, that is all.

Q. Can you remember the conversation you and Maxwell had, and I ask you that direct question, and you can answer it yes or no. A. I can't recollect.

Q. Why do you swear you did not say that to him if you can't recollect and you were in that jovial condition when you met him? You say you were in a jovial condition and you don't remember the conversation you had? A. No, sir.

Q. And you get on the stand under oath and say you don't remember. Now, tell us why you swear you didn't say that to him if you can't recollect and you were in a jovial condition when you met him: I can't understand how you can do that? A. I don't know as I swore to anything of the kind. I believe yesterday—read that testimony. Read the question and answer, too.

[Here the reporter reads the last two questions to the witness.]

A. I testified I didn't recollect whether I had any such conversation with Maxwell at all on that question.

Q. You can't account for that, then, except you can't tell us how it is. You do not swear positively that you did not tell Maxwell this when you were in this condition? A. I swear I don't recollect ever having such a conversation with him at all.

Q. And that is the most you will swear; that you won't swear positive, because you were in this jovial condition? A. Yes, sir.

Q. And when you are in that condition you are liable to josh? A. I am.

Q. Did you ask anybody to vote, on election day, for Banks? A. Not on election day; no, sir.

Q. You are sure of that? A. Sure of it.

Q. Didn't I ask you about ten minutes ago if you didn't ask anybody, any of your friends, to vote for Banks on election day, and you said no, you had not? A. Not to vote for him on that day. I asked them on the previous day.

Q. Well, didn't I ask you that? A. Not on election day; I asked them on the previous day to election day, and when they told me on the day previous "yes," I am satisfied.

Q. Didn't you tell me a moment ago you had asked lots of your friends to vote for him on election day? Didn't you swear to that a few minutes ago? A. Probably I didn't understand that question.

Q. Then, if you swore to that then, you are mistaken, ain't you? A. I guess so.

Q. When you talked with Feeney, were you in this jovial condition?

A. I was. I don't know whether I have talked to Feeney or not.

Q. You don't remember ever having a talk with him? A. I do not; no, sir.

Q. Do you remember having a talk with him that day when you were with Maxwell? A. No, sir.

Q. That same night? A. I don't recollect. I recollect that he was a barkeeper in that saloon kept by Ryan & Fleming on Montgomery Avenue and Broadway. I have talked with Feeney, yes; but not on politics or about Banks—not anything of the kind.

Q. The fact is, that you, Feeney, and Maxwell were together one night? A. Yes, sir; probably a great many. I don't know who was in the saloon.

Q. Wasn't Feeney there? A. Feeney was barkeeper there; he was supposed to be there.

Q. Maxwell was there, wasn't he? A. Maxwell; yes, sir.

Q. Some time, when Feeney was not tending bar, wasn't he there, and didn't you see him? A. I don't know as I did.

Q. Do you swear you did not? A. No, sir; but I won't swear I did?

Q. Don't you know, as a matter of fact, you saw Feeney and Maxwell at this saloon one night, and that you and they had a talk? Do you recollect that? A. I never talked by ourselves.

Q. You had a little talk? A. Not as I can recollect.

Q. Do you ever get in that condition so you cannot recollect anything? A. Yes, once in awhile.

Q. Once in awhile you get so bad that you cannot recollect anything? A. Yes, sir.

Q. And you may have been in that condition, then? A. Yes; probably.

By MR. DORN: Did you ever meet Finney and Maxwell there in the saloon at the same time? A. I have been in there one evening when Finney was tending bar, and Maxwell was taking a drink with I.

Q. Did you ever have a talk there in which the people talking were Maxwell, Finney, and yourself? A. No, sir.

Q. You cannot recollect any such conversation? A. No, sir.

Q. If you had made any such statement, that you had Banks' money, and you were going to work for him, right to Maxwell or to anybody, you would remember it, wouldn't you? A. Yes, sir; I believe I would.

Q. And you don't remember making any such statement? A. No, sir.

By MR. CLUNIE: Are you sure you would remember it? A. I am pretty positive I would.

Q. And you wouldn't have probably remembered it if you had been in this jovial condition, would you? A. No, sir.

By MR. DORN: If you ever did make any such jovial statement in a josh, or any other way, would the statement be true? A. It would not.

Q. Is it true, then, whether you had any money of Banks, I ask you again? A. I didn't have a cent of Banks' money to do any work there, or anything of that kind.

Q. And if any statement of that kind was made there by you, or anybody else, it would be untrue? A. It would.

IGNATIUS CLINE.

A witness on behalf of respondent, was called, sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Mr. Cline, where do you reside? Answer—I live at 1414 Washington Street.

Q. How long have you lived there? A. Ever since I was about four years old.

Q. Do you know Mr. Banks? A. Yes, sir.

Q. How long have you known him? A. I have known him so long that I can't remember. He has known me before I knew him.

Q. You have known him, then, all your life? A. Yes, sir.

Q. You have lived over there in the same section of the country? A. Yes, sir.

Q. On Sunday night before election, did you see Mr. Banks? A. Yes, sir; I did. I was with him.

Q. About the hour between five and eight? A. Yes, sir; I was with him then.

Q. Were you with him at the North End Social Club? A. Yes, sir; I was.

Q. How did you happen to be there? A. We were invited by two young men.

Q. Who were these young men, do you know? A. I was introduced to the young men; I think the name was Riley and Fay.

Q. Do you know whether they were members of the club or not? A. Yes, sir; they were members of the club, because they told us they were.

Q. They were members of the club? A. Yes, sir.

Q. And they invited you to come in? A. Yes, sir.

Q. What did they invite you in for? A. They invited us to come in and see a picture frame Mr. Morrow gave them.

Q. How did you come to meet them? A. We were going up Francisco Street, and one of them came across the street and said, "How do you do, Banks? Did you hear about the picture frame Mr. Morrow gave us?" and he said, "No;" and he said, "Come on down and see it;" and Banks said, "I have got an appointment to make, and I am late;" and he said, "Come on anyway;" and so Banks accepted the invitation, and we went in to see the frame.

Q. Were you going to that clubhouse when you were invited there? A. No, sir.

Q. And you went in because you were so invited? A. Yes, sir.

Q. When you got to the clubhouse, what took place? A. We went in there, and he shook hands with a couple of the boys, and they lit the gas and went in the other room and took out the frame, and come out and showed it to Banks; and he looked at it awhile and said it was very nice, and somebody said they would like to have some pictures to put in it, but they didn't have the funds.

Q. Some of these gentlemen that invited you in there said they would be delighted to have their own pictures in it, but they didn't have the funds? A. Yes, sir.

Q. Give us the whole conversation, word for word, as near as you can. A. We stood there three or four minutes, I don't think much longer—not longer than five minutes we stood there—and Banks invited them across the street to have a drink, and before we went out they gave three cheers for Banks, and we were walking across the street, and I said to Banks, "These people are friends of yours," and he says to me, "Don't you fool yourself. These people will down me if they can; they will drink with me, and they will down me if they can."

Q. Then Banks knew just about how much he could trust these people? A. Yes, sir; he did.

Q. And he so informed you at the time? A. Yes, sir.

Q. Did anybody else go with you and Banks to that place? A. Yes, sir. Attridge went with us.

Q. Attridge, the witness who was on the stand? A. Yesterday.

Q. Did Banks give them any money to get their pictures taken with? A. No, sir.

Q. Did he make any promise to give them any money? A. No, sir.

Q. He made no response when they said they would like to have their pictures in the frame, but they didn't have any funds? A. No, sir.

Q. All he said was, "Well, come over and have a drink?" A. Yes, sir.

Q. And you made the suggestion that they were all friends of his? A. Yes, sir; that is what I thought, and I thought they were all friends of Banks.

Q. And he told you you were mistaken? A. Yes, sir.

Q. Where did you go when you went over there? A. We went across to opposite Francisco Street to the saloon.

Q. What place is that? A. I don't know the name. It is on the south-west corner.

Q. Ain't it Lilkendey's saloon? A. Yes, sir; that is the man.

Q. Did you have any drinks there? A. Mr. Banks went in and ordered the drinks.

Q. What took place after you got in the saloon? A. We went in and he ordered the drinks. We got talking there for a couple of minutes, and he went up to the bar, and he has got a little glass he calls his mascot; it is a little bit of a glass, and he put that on the bar, and he says, "Give me some lager," and he put the glass on the bar, and before he drank it, these gentlemen said they would like to see him, and they took him to one side down by the billiard table.

Q. Which two gentlemen? A. Riley and Fay.

Q. After having invited him and after having suggested to him that they would like their pictures in the frame, and they were not good friends, after you got in the saloon, they pulled him to one side, and said, "We would like to see you?" A. Yes, sir.

Q. Did Banks refuse to talk with them, or to walk one side, or why did they invite Banks? A. They invited Banks to one side.

Q. When you saw them invite Banks to one side, did that or did that not create a suspicion in your mind? A. That is what I thought. I thought these fellows were going to do him up if they could.

Q. What did you do? A. I walked to the end of the table; they walked down to the side of the table, and I walked to the end of the table, and I put my elbow on it, and I leaned there.

Q. That was a billiard table, was it? A. It is a square table; I couldn't say whether it was a billiard or pool table. They went down to the end, and I leaned my elbow on the table, and they were almost down—they were down within two feet of the end of the table.

Q. How far were you from them? A. I was about two feet and a half.

Q. Were you or were you not in such a position that any conversation which took place or which occurred between them would be audible to you? A. Yes, sir; it would.

Q. If anything was said there, then, or any conversation took place, you were able to hear it, and did hear it? A. Yes, sir.

Q. Was anything said between them, or could anything have been said by Riley, or by Fay, or by Banks, during that conversation, which you did not hear? A. There might have been some words I did not hear, but it was very few.

Q. Tell us, as near as you can remember, the conversation that did take place? A. When they got down to the end of the table they started in asking how everything was running in that district, and he said fine; and they said they were glad to hear it; and they said they were for him, and all the boys down that way were for him, and "as Mr. Morrow has made us a present of this frame, we would like now to have pictures to put in it," and they wanted money—and how much I don't know—from Banks, but I know at that time Banks couldn't give them any money, because Banks didn't have \$10 in his pocket. We were going down Bay Street, and Banks put his hand down in his pocket and pulled out \$5 and some silver, and said that his funds were getting pretty low. Maybe there was \$8 50 there; something like that.

Q. What was the rest of that conversation? A. It all run in that strain.

Q. What did Banks say in response to the request for money? A. He didn't say yes or no.

Q. In other words, he stood them off? A. Yes, sir.

Q. Did he offer to get them any money? A. No, sir.

Q. Did he propose to give them any money? A. No, sir.

Q. If he had, don't you think you would have heard it? A. I would have heard it; yes, sir.

Q. Did he talk about \$20 and say, "I will put \$20 over the bar now, and I will give \$20 more if I carry the precinct?" A. No, sir; he never raised his elbow off the billiard table.

Q. If he had held up \$20 and said, "I will put up \$20 over the bar," everybody could have seen it and heard it? A. No, sir; they couldn't.

Q. If he had done that, then, anybody else would have seen it? A. Some of them might have seen it if he did it.

Q. Did anything of that kind occur? A. No, sir.

Q. Neither that language nor any other language of similar import? A. No, sir.

A. And Banks didn't propose to give them any money, or didn't offer them any money? A. No, sir.

Q. Did Banks give them \$10? A. No, sir.

Q. If Riley testified that Banks gave them \$10, that was untrue, was it? A. Yes, sir.

Q. If Fay testified to such a conversation as that, that Banks took out \$20, and said, "I will put \$20 over the bar, and \$20 more I will give you if I carry the precinct," then Fay's testimony in that respect is false, is it? A. Yes, sir; false.

Cross Interrogatories.

By MR. CLUNIE: What is your business? A. I am a teamster.

Q. Where are you teaming now? A. I am driving for J. A. Brown, 270 Commercial.

Q. You are working for him now, are you? A. Yes, sir.

Q. When did you go to work for him? A. I am working for him about three months.

Q. How did you come to go to work there? A. I have known the man for years, and I went down and he hired me.

Q. Where did you work before that? A. Before that I was working in Washington Territory.

Q. How long have you been in this State? A. I have been twenty-four years in the State.

Q. You were twenty-four years in the State, and you have been working for Mr. Brown three months, and before that you were in Washington Territory? A. Yes, sir.

Q. How could you do that? A. I left the State for five months.

Q. When did you leave it? A. I left it in April or the last of March.

Q. Where did you live at that time? A. Four hundred and fourteen Washington Street.

Q. The same place you are living now? A. Yes, sir.

Q. Your folks, I suppose? A. Yes, sir.

Q. What part of Washington Territory did you go to? A. I went to Seattle.

Q. What did you go there for? A. I got tired of the city and I went up to Seattle to go to work.

Q. What made you go away from Seattle? A. What made me go away from Seattle?

Q. Yes. A. What would make you go away from any place?

Q. I never got as far as that. They didn't drive you out of town, did they? A. No, sir.

Q. How did you come to leave Seattle? A. I left Seattle to go to Port Townsend.

Q. How long did you stay in Seattle? A. I stayed in Seattle three days.

Q. Then you didn't work there very long? A. No, sir; I didn't get nothing to do.

Q. What game were you working up there? What were you doing up there?

MR. DORN: One moment. You are not required to answer any such question.

MR. CLUNIE: I withdraw my question.

Q. What were you doing in Seattle three days? A. I was looking for something to do, and I couldn't find it, and I went to Port Townsend. If you will stop a minute, I will tell you the whole business all in a nutshell.

Q. Let me run it. A. No. I went up from Seattle to Port Townsend, and stayed there one night, and then I went to a place called Port Hadlick, and went to work there next morning, and worked about three months, and from there I went to a place called Quilicene Bay; I hired out to a logger.

Q. You ain't through yet, are you? A. No; I want to give you the whole business, so you will see where I am standing. From there I went to a place called Oak Home; I went to work there for a logger. I worked for him two months, and from there I went up to Seabeck; from there I went to Port Gamble; from there I went to Port Townsend; and from there I took the steamer for San Francisco; so now you have got the whole business.

Q. And at none of these places you were, would they keep you longer than two days? A. I didn't like the job in some places. Look here. You go out and rustle lumber, and you will see how long you hold it.

THE COURT: Answer the question, and don't argue with counsel.

MR. DORN: I will say to you, you have nothing to get excited about, and you can take your time to answer these questions.

By MR. CLUNIE: Leave out about the lumber; I have got a better thing than that. Go on. These people you worked for up there didn't let you work any longer than two days in any one place, did they? A. Certainly.

Q. How long did you work? Did you work three days any time? A. I worked one place three months.

Q. Where was that? A. Port Hadlick.

Q. When was that—the last time? A. No, sir; that was the first place I went to work.

Q. The first place you went to they kept you three months: they let you stay three months? A. They didn't let me; I left of my own object; if I didn't suit them they wouldn't keep me two days.

Q. The next place you worked two days? A. I worked two months.

Q. Two months in the next place? A. Yes, sir.

Q. That was five months? A. Yes, sir.

Q. How many other places did you go to in the remaining months? A. I came right straight through to San Francisco.

Q. You didn't stop in any of these places? A. I just had to come through those places to come this way.

Q. Just a sort of tourist? A. Yes, sir.

Q. You had to come through all those places to get to San Francisco?
A. Yes, sir.

Q. And you stayed in none of them two days? A. I stopped in one three days. I stopped in Seattle.

Q. You went there on the train? A. I didn't mention the train to you. If you got that down about the railroad train, all right. I didn't mention any train to you.

Q. You went to all these places? A. Some of the places I had to use my elbows and a pair of oars.

Q. Did you stop at those places? A. I had to stop there when I got there. I couldn't go through.

Q. How long did you stop at any of them? A. Long enough to get away from there; long enough to fill the inner man and get off again.

Q. How long did that take? A. One place it took five hours.

Q. That was the next place you stopped? A. That was the next.

Q. You didn't look for work there? A. No, sir; I wasn't looking for it. I was coming back.

Q. Had you been keeping house down here before you went away?
A. No, sir.

Q. Are you a married man? A. No, sir.

Q. You are a single man? A. I am a single man.

Q. You had been living with your folks? A. Yes, sir.

Q. You went up to Washington Territory? A. Yes, sir.

Q. You had heard a good deal about that Territory, I suppose? A. Yes, sir.

Q. And you thought it a good place for you to locate, a young man?
A. Yes, sir.

Q. And you thought you would locate? A. I thought if there was any good land in sight, I would file a preëmption on it.

Q. You thought if there was any good land in sight, you would file a preëmption on it? A. Yes, sir.

Q. And you went up there and staid five months? A. Yes, sir.

Q. Six months? A. Something like that; I couldn't definitely state.

Q. And you returned here when? A. I returned in September some time.

Q. Then you were away from the State about six or seven months?
A. No, sir; I was away from the State maybe five or six months.

Q. And when you left the State, you left it with the intention of going to Washington Territory? A. No, sir; I did not. I never left it with the intention of losing my residence.

Q. I didn't ask about your residence. A. I am talking about that.

Q. What makes you say that? A. Because you have got it I went up there to stay altogether, and I didn't do that.

Q. You told me that when you left here, you went up to Washington Territory with the idea of preëmpting a piece of land? A. Yes, sir.

Q. You knew you had to stay on the land? A. Yes, sir; if I could find a piece.

Q. If you could find a piece of land, you went up there to stay on it?
A. Yes, sir.

Q. And as a matter of fact, you had not been here a year before election? A. No, sir; I had not been here a year before election.

Q. Did you get on the Register? A. Certainly, I was on the Register.

Q. You swore you had been in the county here a year? A. Certainly, because I wouldn't lose my residence going away.

Q. You didn't consider that losing your residence? A. No, sir.

Q. You knew that in going to Washington and getting on a piece of land you would have to swear you were a resident and intended to reside on the land? A. Certainly, if I did that.

Q. But your intentions were that way? A. Yes, sir.

Q. And you came back to San Francisco? A. Yes, sir.

Q. And you swore you had been in the county a year? A. Yes, sir.

Q. And you had not been here for five or six months? A. You know this, when a man is away five or six months—

Q. [Interrupting.] Just go on and answer the question.

MR. DORN: I ask your honors to allow the witness to answer the question. He has a right to give that explanation.

[Here the reporter reads the question and answer.]

By MR. CLUNIE: Is that your answer? Answer the question. A. I don't see the question there to answer.

MR. DORN: You were about explaining something. Now, finish your answer.

THE COURT: He says he has nothing to answer.

By MR. CLUNIE: You did swear, as a matter of fact, that you had resided in the city a year, in the county sixty days, and in the precinct thirty days, didn't you? A. Certainly, I did.

Q. What time did you get back? A. I couldn't state.

Q. What steamer did you come down on? A. I came down on the Umatilla.

Q. You are sure it was in the month of September? A. Yes, sir; the month of September.

Q. Was it in the last part of September? A. No, sir; the first part of September: the early part.

Q. Which is the first part? A. The early part.

Q. Did you get back on the first? A. No, sir; I didn't get back on the first.

Q. Did you get back on the second? A. I do not know what day I got back on, or what date.

Q. What did you swear you got back in the early part for, then? A. I got back on the eighteenth, I know.

Q. You won't swear it was the thirteenth? A. No, sir.

Q. You swore you had been in the county sixty days, didn't you; you swore you had been here ninety days immediately preceding the election, didn't you? A. Yes, sir.

Q. You got back here in September? A. Yes, sir.

Q. September to October is one, October to November is two. Then, as a matter of fact, ninety days prior to election you were away up in Oregon hunting for a piece of land to preëempt, weren't you; isn't that the fact? A. Certainly, it is the fact.

Q. And still you swore that ninety days prior to the election you were a resident of that county? A. A man never loses his residence.

Q. You say you have known Mr. Banks a long time? A. Yes, sir.

Q. And he has known you longer than you have known him? A. Yes, sir.

Q. How do you know that? A. He has lived there ever since I can remember, and he was there on that block.

Q. You don't want to swear that you did not know him longer than he has known you? A. Because when I was young I didn't know him.

Q. How do you know that? A. Because my folks told me it.

Q. What were you doing with Mr. Banks that night? A. I was taking a walk with him.

Q. What did you take a walk with him for? A. We were up to the corner; he was going off to take a walk, and he asked me if I would go, and I said yes.

Q. And you started off? A. Yes, sir.

Q. Where were you going? A. We were just taking a walk around through the district.

Q. You didn't know where you were going? A. Not exactly, no.

Q. You swore a moment ago you intended to go down to the North End Boat Club? A. I didn't say a word about a boat club.

Q. You were talking about the North End Social Club? A. Well, that is no boat club.

Q. You swore when you started out you did not know where Banks was going? A. Yes, sir.

Q. Yet you swore a moment ago that he was going to the North End Social Club? A. I did not.

Q. Why? A. Because he did not tell me.

Q. You knew it, because he would have told you? A. Yes, sir.

Q. How did you know that he was not going down there? A. I did not know he was going, I simply went with him.

Q. Then, as a matter of fact, you did not know whether he was going down to the North End Social Club or not? A. No, sir.

Q. And you went down to the boat-house with Banks? A. Yes, sir; I went down to the boat-house with Banks.

Q. From there where did you go? A. From there we went down Bay Street.

Q. Who did you see down on Bay Street? A. We went into a house on Bay Street.

Q. What house? A. A man named Brady.

Q. You listened while they talked, did you? A. Yes, sir.

Q. They talked about the election, did they? A. No, sir.

Q. They did not mention the election? A. No, sir; we were having just a good time; there was a couple of boys singing there.

Q. There was not a word said about the election, was there? A. Not to my knowledge.

Q. You wouldn't have heard two men talk without your going up to listen, would you? A. Well, we were all talking down there together.

Q. You wouldn't let Mr. Banks sit down without your going up and listening to it? A. Not if I could hear it.

Q. And you didn't hear any conversation there about the election? A. No, sir.

Q. Where did you go after that? A. Then we went out.

Q. How long did you stay there? A. Probably ten or fifteen minutes.

Q. Who is Brady? What does he do? A. I don't know. He is an ironmolder; something like that.

Q. And he had the boys in there having a good time, did he? A. Yes, sir.

Q. And you and Banks went in? A. Yes, sir.

Q. And you did not say anything about the election at all? A. No, sir.

Q. And you stayed there how long? A. We stayed there maybe ten or fifteen minutes; I couldn't tell how long we did stay there.

Q. Then you came out and went where? A. We went down Bay Street and to Mason.

Q. Who did you see there? A. We didn't see anybody.

Q. Where did you go? Down Mason? A. No; we went up Mason to Francisco.

Q. Then you met these people? A. They were coming down to this saloon, and we were going across the street.

Q. Where was Banks? A. He was going down to meet Smith.

Q. How do you know that? A. Because he told me.

Q. When did he tell you that? A. He told me after we left the boat club.

Q. Prior to that he had not told you? A. No, sir.

Q. Where was he going to meet Mike Smith? A. Powell and Francisco.

Q. Did he meet Mike? A. No, sir; he was late in his engagement.

Q. You and Mr. Banks then met Riley and Fay? A. Yes, sir.

Q. They came out and took him in the place? A. They didn't come out: they were not in the place. We met a block away from the place.

Q. And they said, "Come on; let us go down to our club; we want to show you a picture frame?" A. Yes, sir.

Q. And they asked Banks for money to fill that? A. They did not ask him for money, but they gave him a gentle hint.

Q. What did they say? A. They said Mr. Morrow had made them a present of the picture frame and they would like to have the pictures, but they didn't have any money.

Q. They did not ask Banks for money? A. No, sir.

Q. They did not say a word about it? A. No, sir.

Q. Then Banks said, "Boys, come on and have a drink?" A. Yes, sir.

Q. Whereabouts did they go? To Lilkendey's? A. Somewhere in there.

Q. And they all had a drink? A. Yes, sir.

Q. Is Fay a very bad looking man? A. No, sir.

Q. And was Riley, either? A. No, sir.

Q. They didn't look like desperadoes? A. No, sir.

Q. And they didn't look like they would cut Banks' throat? A. No, sir.

Q. And you all went in there? A. Yes, sir.

Q. And had a drink? A. Yes, sir.

Q. And they said to Banks they wanted to say something to him. A. Yes, sir; they went one side.

Q. And you were afraid they were going to say something to Banks, and you went to listen. A. Yes, sir.

Q. Do you follow that occupation? A. No, not exactly.

Q. Do you think it is a nice thing to do? A. Everything is fair in war. I was working and doing all I could for Banks.

Q. Were you on a war? A. Yes, a sort of a war.

Q. Were you having a regular war? A. The way people are in politics, working against each other, I think that is war.

Q. What made you go and listen to their conversation to one side there? A. What he told me coming across the street made me go down to listen. He told me they were no friends of his. He said to me, "These people are no friends of mine; I am no fool; they will take a drink with me, but they will down me."

Q. And you were afraid they were going to down him right there? A. I was afraid they were going to try and bleed him.

Q. What do you mean by bleeding him? A. Getting money out of him.

Q. You were afraid they were going to try and get money out of Banks? A. Yes, sir.

Q. Mr. Banks is a very able-bodied man, isn't he? A. Not very.

Q. He has not as much intelligence as you have? A. Yes, and a great deal more.

Q. And you were afraid these people were going to bleed him? A. That was my candid opinion. In politics a man is very foolish, sometimes.

Q. What did you think these fellows were going to do? A. I thought they were going to get some money out of him.

Q. Did you think they were going to get \$100 out of him? A. No, sir.

Q. You had it put up, didn't you? A. No; I didn't have it put up at all.

Q. Did you think they were going to ask him for a twenty? A. No, sir; I didn't think any such sum at all.

Q. If you had been there, you would have given them a dollar or so? A. No, sir; I don't know as I would.

Q. You would still call that bleeding? A. Yes, sir, certainly; if a man took a five-cent piece away from a man, and told him he would work for him, and then turn around and not do it, I call that bleeding a man.

Q. If he takes the money and stays with him, that is legitimate. A. Certainly; if he comes up and gets money and says, "I want to work for you."

Q. And that is legitimate business? A. Certainly, it is.

Q. And that is the kind of warfare you were carrying on up there: if you give money to people, and they tell you they will work for you, it is all right? A. Yes, sir.

Q. You didn't see anything of that kind up there? A. No, sir.

Q. That would have been all right, and you would have done that? A. I may if I had seen the man.

Q. What did you determine to do if they had asked him for money? A. I was just going to tell him my candid opinion of him when I got him out.

Q. You were going to lecture Banks when you got him outside? A. Yes, sir.

Q. You were going to play grandmother over him when you got out, and lecture him? A. Yes, sir.

Q. Did you think they were going to bleed him very extensively? A. No, sir.

Q. You did not think they were going to bleed him of very much? A. No, sir.

Q. You knew at the time he didn't have very much on him? A. No, sir; at the time he didn't have very much on him.

Q. How much do you say he had when he pulled this out, and showed it to you? A. Something like \$8.

Q. How did that occur? A. That was down at Lilkendey's.

Q. Before you went up there? A. Yes, sir.

Q. And you had that drink? A. Yes, sir.

Q. And they had been beat out of it? A. No, sir.

Q. These two men that were playing against Banks, you thought might by some scheme get that \$8 out of him? A. Yes, sir.

Q. And that is what you want these people to believe? A. Yes, that was it.

Q. Don't you know that was put up there at the time? A. No, sir.

Q. Might there not have been such a conversation between them? A. No, sir; there might have been two or three words.

Q. Why do you say two or three? A. Because I listened to most everything except them few words.

Q. How many words did you miss? A. I couldn't state that.

Q. Why do you swear it was only two or three? A. It might have been only two or three.

Q. It might have been four, might it not? A. I don't know as it could.

Q. What three words could you have missed? A. I could not know the words I missed.

Q. Do you know what they said? A. Yes, sir.

Q. What did they say? A. They told me that the boys were all there for him.

Q. Who said that? A. Mr. Riley, I believe; and he asked how things were running through the district, and Billy told him it was pretty fair.

Q. And what else? A. And then tackled him about this money for the pictures.

Q. Who tackled him? A. This tallest fellow, I think.

Q. Don't you know who that is? A. It was Riley.

Q. Then it was Riley that tackled him? A. Yes, sir.

Q. Riley said, "Give us some money to get the pictures?" A. Yes, sir.

Q. Did he say how much he wanted? A. No, sir.

Q. Mr. Banks did not say, "Boys, I have only \$8 with me," did he?
A. No, sir.

Q. You didn't see him insulted? A. No, sir.

Q. He didn't say, "I am a candidate for office and cannot give you money?" A. No, sir.

Q. They said, "Give us money for the pictures?" A. Yes, sir.

Q. Banks did not say anything? A. Yes; he hemmed and hawed, and got out of it the best way he could.

Q. Tell us how he got out. A. He told them he would see about it, and he didn't know; and you know how a man will try to get rid of another man.

Q. You don't know how Banks will do. I have been trying to find out.
A. I don't know exactly the words Banks was saying.

Q. Then you cannot swear exactly the words Banks did say?

MR. DORN: Of course he cannot.

MR. CLUNIE: I submit that Mr. Dorn is not testifying.

A. Banks tried to get out of it the best way he could.

Q. Tell us what he said, trying to get out of it. Tell us just how and what he said. A. Some of the words that Banks said that I caught was that he didn't know how things were running yet, and he couldn't very well see, but he would see them later. Something like that.

Q. He couldn't do it now, because he didn't know how things were going? A. Yes, sir.

Q. But he wanted to see how things were running? A. He wanted to get out of it, you see.

Q. You did not know what he wanted, did you? A. No, I didn't know it.

Q. Are you a mind reader? A. No, sir.

Q. How do you know what a man wanted to do? A. I can know very near it.

Q. How do you do that? A. I just figure myself in the same position, trying to get away from two men without insulting them.

Q. Then all of your testimony, as to what Banks did, arises from what you would have done, had you been in his place? A. Yes, sir.

Q. Then you swear by an imaginary conversation you had with these people? A. No; not exactly.

Q. Tell us what you mean by "not exactly." A. He told them he didn't know how things were going, and he would see them again: something like that.

Q. He told them he didn't know how things were going, and he would see them again? A. He wanted to get away from them.

Q. How do you know that? A. He said it when he came outside.

Q. He told you when he came outside he wanted to get away from them?
A. Yes, sir.

Q. Can you give us all the conversation that occurred between Banks and these people? A. I can give you what these people said, because I walked over, and said, "Come on."

Q. Ain't it funny that you heard all they said and not all that Banks said? A. I heard, but I can't recollect all of it.

Q. You heard all Riley said distinctly? A. Not all of it; but I don't recollect, because there was some other I don't recollect.

Q. Then there was some conversation? A. There was: but not any conversation about him giving them money.

Q. How can you tell the conversation when you say you don't recollect it? A. I say I don't recollect it.

Q. Then you cannot tell what it was? A. Certainly if I could recollect, I could. I can only recollect some of it.

Q. You can only recollect some of it? A. Yes, sir.

Q. There is some of it you don't recollect at all? A. Some of it I don't recollect.

Q. You don't pretend to swear what the conversation was that you don't recollect, do you? A. I can swear that the conversation was nothing like that.

Q. How can you swear? A. Because I heard everything that was said; I don't recollect some parts of it.

Q. How do you know that this part you don't recollect is not the part that we say occurred? A. Because I know it.

Q. How do you know it? A. Because I know it.

Q. Tell us how you know it. Do you remember what did occur? A. Certainly, I remember.

Q. Then tell me what occurred. Tell me what occurred, and give it to me as short as you can. A. Say, Mr. Clunie, you go down street, and you would have a conversation with a gentleman yourself, and you would listen to a couple of gentlemen speaking. May be after you got through and you got up here, and I would ask, "What did those gentlemen say——"

Q. [Interrupting.] I would not remember? A. No.

Q. And you don't, either? A. Certainly, I remember some of it. I can't tell you, word for word, what these gentlemen said. I am just telling you the whole sum and substance of it.

Q. Just tell us the whole sum and substance of what Mr. Banks said. You have told me exactly, or almost exactly. You say there was some other part of it Riley said that you don't remember. But now tell us what Banks said. A. Mr. Banks was in an uneasy condition, trying to get away from these people, and he didn't want to insult the gentlemen, and he wanted to get away as easy as he could, and I hastened him some, because I was in a hurry, and I had to call him twice, and at last he did condescend to come over and take a drink and go out.

Q. Have you told me what he said? You have told me what Riley said, and what everybody else said, and not what Banks said, and what Banks said is what I want. You were there and heard the conversation, and I want you to tell me what he said. A. I told you Banks was uneasy.

Q. What did he say? A. He said he would see how things were going, and he said he would call to see their picture, and then he came away.

Q. And what else? A. That is all I caught on to.

Q. That is all you caught on to, is it? A. No; there was something, but I didn't catch on to it.

Q. You know there is something that you don't remember? A. Yes, there is something I don't remember.

Redirect Interrogatories.

By MR. DORN: You heard what did occur, did you? A. Yes, sir.

Q. Was there anything about money? A. No, sir; there was nothing about money.

Q. Then you have stated the substance of the conversation? A. Yes, sir: the sum and substance of the conversation I have stated.

Q. You cannot state the exact language? A. No, sir.

Q. Was anything else said there about money or about pictures that you did not hear? A. No, sir.

Q. Then the reason you say you don't remember all was that you don't remember the language that was used? A. Yes, sir.

Q. And you did hear all the conversation, and you did state the substance of it? A. Yes, sir.

Q. If anything of the kind I asked about, \$20 over the bar and \$20 after election if the precinct was carried, did occur, you would have remembered it? A. Yes, I would have known it.

Q. And it would have been very distinct in your memory? A. Yes, sir.

Q. Then the remark of Mr. Banks that these people were no friends of his, that they would drink with him and they would down him, made you suspicious of them? A. Yes, sir; it made me suspicious.

Q. And when you saw them taking him apart, you were afraid they were going to down him? A. Yes, sir.

Q. And you were afraid they were going to do something you did not see? A. I didn't think that.

Q. While you were leaning on the billiard table, did Banks carry on a conversation in a tone which you could not hear? A. No; he talked in an ordinary tone of voice.

Q. And he did not say anything to them, did he, attempting to conceal from you or so you couldn't hear? A. No, sir.

Q. There was nothing which he apparently had any desire to hide and which he tried to hide? A. He didn't hide anything.

Q. And he went on in the conversation and tried the best way he could to get away from them? A. Yes, sir.

Q. And according to your opinion there were simply some people there trying to bleed him because he was a candidate, and trying to get money out of him, and they were not his friends at all, and he got out of it the best he could, without insulting them? A. Yes, sir.

Q. And when you got out of there, he said that? A. Yes, sir.

Q. And you thought you were well rid of that gang? A. Yes, sir.

Q. And they were on one side of the billiard table and you were on the other? A. No, sir: I didn't say that.

Q. Where was it? A. I was on the end and they were on the side.

Q. How far is that apart? A. The table is eight feet long.

Q. You were eight feet apart, were you? A. No, sir.

Q. How far? A. About two feet apart.

Q. That is all? A. Yes, sir.

Q. You got up that close to protect your friend Banks from these evil people? A. Exactly.

Q. This Fay is a great big man, isn't he? A. No; he is a little fellow, like Banks.

Q. He looks very dangerous, don't he? A. No; he don't look very dangerous.

Q. You voted at the last election? A. Yes, sir.

E. P. BUCKLEY.

A witness on behalf of respondent, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Mr. Buckley, where do you reside? Answer—No. 520 Lombard Street.

Q. How long have you lived there? A. About thirty-five years.

Q. Where were you at the last election? A. In the Third Precinct of the Thirty-fourth District.

Q. What were you doing there? I took a very active part for the success of the Republican party in the late election.

Q. And by whose special appointment were you there? A. Not by any particular special appointment. I always take an interest in the election, and have for a great number of years.

Q. You were not a member of the County Committee? A. No, sir.

Q. Who was the member of the County Committee for that district? A. Mr. Banks and Mr. Smiley.

Q. Mr. Smiley is the Chairman of the Republican County Committee, was he not? A. Yes, sir.

Q. And he could not be present on that day, and that left the whole district to Banks, didn't it? A. So I understood.

Q. As a matter of fact, you were called in or volunteered or were sent for to assist Mr. Banks in the absence of Mr. Smiley; isn't that the fact? A. Yes; I am generally acquainted with the voters there, and the Republican voters, and also take an active part in the election.

Q. On the morning of election day you were working around in the different precincts—yourself and Mr. Banks, for ticket peddlers and for people to look after the ticket challengers, stationing the different people, staying where there were vacancies, and getting things in proper shape? A. No; not Mr. Banks and myself. I attended to that myself in my own precinct.

Q. You attended to that yourself? A. Yes, sir.

Q. Do you know a man by the name of Mascherini? A. Yes, sir; very well.

Q. How long have you known him? A. I have known him. My family trade with him probably \$20 or \$30 a month for groceries.

Q. He is your grocer? A. Yes, sir.

Q. You introduced Mr. Banks to him on election day, didn't you? A. Yes, sir.

Q. What, if any, conversation took place between him and Banks, or between him, Banks, and yourself? First, why did you introduce him to Banks? A. Then it would be necessary for me to state the facts as they are?

Q. Yes, sir; go on and state them in your own way without questioning. A. During election day I always take a prominent and active part in that precinct, which I have for a great number of years, and many of the

Italian citizens, whom I recognized as Republicans, I saw that they were working the Democratic ticket.

Q. You saw what? A. I saw that many of the Italians that I had known were of Republican proclivities were working for the Democratic ticket, and during the day, in a conversation with Mr. Banks, I stated that it was an unfortunate thing that Mr. Smiley was not around, that there ought to be some action taken to counteract the work of the Italians, and that I did not feel inclined to be responsible for it, and that he himself had better take some action on the matter. He asked me what I thought ought to be done. I said, "I can suggest a couple of Italians, lively Republicans, and men that I have got confidence in, to work and counteract this business." He asked me who I would suggest, and I suggested Demartini and Mascherini. He asked me and said, "What do you think it will be about the cost?" I said, "I suppose probably about \$10 each." He said, "All right." I took him then to Demartini, he also had charge of the Republican tickets then. I told him to leave the place, and introduced Mr. Banks to him. I then took him into the grocery store and introduced him to the other.

Q. Did Mr. Banks arrange with him that he should work for the Republican ticket? A. Yes, sir.

Q. And to try and get his countrymen to vote the ticket? A. Yes, sir; that was my object.

Q. You say you had no special object or special motive for the election of Banks; it was for the entire ticket, and because you saw that other people were canvassing for the Democratic ticket, and you thought it was best, as a Republican, to see that somebody was canvassing for the Republican ticket? A. That, and in the afternoon because I took an interest in Mr. Banks personally, and my friend bet me \$20 and I took it up.

Q. Who was that? Mr. Sullivan? A. No, sir; his friend Maxwell. There was \$40 interested in the matter, and I then took more interest in Mr. Banks personally, but generally I was working for the ticket.

Q. Up to that time your fight and activity was for the Republican ticket, and the Republican ticket alone? A. Yes, sir.

Q. And it was in pursuance of that that you introduced Mr. Banks as the Republican County Committeeman to Demartini and Mascherini? A. Yes, sir.

Q. Did you hear the conversation that took place between Mr. Banks and this man Mascherini? A. I was around, and present. I brought Mr. Banks to him.

Q. You were there with him? A. Yes, sir.

Q. And you heard the conversation which took place? A. Yes, sir.

Q. Of course you cannot give the exact conversation, but give us the substance of it? A. The substance is that I requested Mr. Banks to employ him on behalf of the Republican party, and I introduced him to Mr. Banks, and Mr. Banks asked me how much it would probably cost, and I told him probably \$10, and I didn't want to be personally responsible for it.

Q. When you introduced him to Mascherini, he asked Mascherini if he would peddle Republican tickets, or something of that kind? What did Mr. Banks say to him when you introduced him? A. I am under the impression that I said to Mascherini, "Here is Mr. Banks, and I wish you to go out and assist us in this fight, and I will give you a list of your countrymen." I had a list of names of parties who had not voted, probably, and to use his influence to get their votes.

Q. Did you see Mr. Banks give him \$10? A. I did.

Q. When Mr. Banks gave him that \$10, did he use this language: "You need some coin to do something?" A. I don't recollect the use of that language.

Q. Did he use this language: "Do the best you can for me and treat the boys?" A. I certainly think he did not, unless there was some after conversation.

Q. If he had used any such language as that, you would remember it? A. Most unquestionably I would have heard

Q. In other words, you don't pretend to use the exact words, but simply hired him to peddle the Republican tickets? A. There was not over three or four words passed. It was simply my suggestion that two men should be employed, and I called him out of the store, and after Mr. Banks had given him the money he didn't go to work, and I went in and told him, on two or three different occasions. "Here, you must go to work on this thing. You know all of those parties will have voted, and you can be of no service to the party," because Maxwell and his friends were rushing them in very rapidly.

Q. Maxwell was voting them and rushing them in very lively? A. Yes, sir.

Q. For the Democratic ticket? A. Yes, sir.

Q. And you thought it was necessary for that man to go out and earn his \$10? A. Yes, sir.

Q. And you thought it was necessary for him to go and talk with them and get them to vote the Republican ticket? A. I called on him and urged him to go out and work the Republican ticket.

Q. Did he do so? A. He did.

Q. In pursuance of that employment by Banks, the Republican County Committeeman, he did go out and work the Republican ticket after you had explained to him a time or two? A. Yes, sir.

Q. Do you know a gentleman by the name of Levy who acted as a Clerk over in that district at the last election? A. Yes, sir.

Q. In what precinct? A. In the Third Precinct of the Thirty-fourth Assembly District.

Q. Did you have any conversation with him about election time regarding election matters? A. No, not specially.

Q. I mean with regard to the counting of the votes, which this young man Levy told you about? A. Mr. Levy called to see me in the evening; in fact, it was through my recommendation that he was appointed Clerk, and he stated to me that I should remain on watch that evening, as Mr. Maxwell and Mr. Hussey had called on him and that they had promised him favors in case that he would assist that evening in casting votes against our candidate for Senator and in favor of theirs.

Q. Did he say what the favor, or what the compensation which was offered, was? A. No, sir.

Q. He didn't name the figure? A. No, sir.

Q. Or didn't tell you what it was? A. No, sir.

Q. And he came to put you on your guard? A. Yes, sir.

Q. He said that that kind of thing was going to be attempted, he feared, and said he had been offered a consideration if he would assist in it? A. Yes, sir.

Q. And in pursuance of that warning you did stay on watch there, and look after things? A. I did, sir.

Q. Then, if this man Mascherini testifies that he did nothing with this money, except to treat the boys, he states what is not true, does he? A. If he did nothing but treat the boys?

Q. Yes. A. Well, he deceived me in the matter, because, at my solicitation and my urging him, I sent him out to go among his countrymen and try and drum up votes; and if he did not do it, I was deceived in the matter.

Q. You supposed that he did? A. I supposed that he did.

Q. And he left you saying that he would do so? A. He left me saying that he would do so.

Q. And that was the purpose for which he was employed? A. Precisely.

Cross Interrogatories.

By MR. CLUNIE: Mr. Buckley, what is your business? A. Real estate and insurance business, sir.

Q. Where is your place of business? A. I am connected with the Home Mutual Insurance.

Q. Where is that office? A. Sansome Street.

Q. What position do you hold there? A. Nothing special, no more than one of the agents.

Q. What agent are you? You say you are one of the agents. A. Connected with the company; getting a commission.

Q. You are simply an insurance broker? A. Yes, sir.

Q. That is all you do, is it? A. Yes, sir.

Q. And your office is with the Home Mutual Company? A. Yes, sir; at the State Investment, I should say. I go to both companies, in fact.

Q. You are connected with both of them? A. Yes, sir; more or less.

Q. You are a Republican, you say? A. Yes, sir.

Q. You are not a member of the Republican Committee? A. No, sir.

Q. Did you take a great interest in the Republican ticket? A. I have done so.

Q. That was Mr. Harrison, mainly, I suppose, was it not? A. No, not specially. I am generally a party man.

Q. You are mainly interested in national politics, are you not? A. I am principally in national, yes, sir.

Q. What precinct was that, did you say? A. In the Third of the Thirty-fourth.

Q. And you have lived there how many years, do you say? A. About thirty-five.

Q. And you say that that day you took a particular interest in Mr. Banks' fight; is that it? A. No, I didn't say so. I said I took a particular interest in the success of the entire ticket.

Q. First you took an interest in the entire ticket; is that it? A. I did, at all times. I have no preference for any one in particular.

Q. Then, if you said a little while ago that you took no interest in the Banks fight, it is not true? A. It makes no difference what I said a little while ago, it is a different proposition now. I take an interest at all times, and I have during that thirty-five years, in the elections. I am always there in the precinct from the time it opens until it closes; I was there, and I had no particular interest in Mr. Banks or any one; in fact, as a delegate to the Republican Convention, I voted against Mr. Banks, and for Mr. Hussey.

Q. You have nothing further to say on that? A. No, sir; that is about the sum and substance of that.

Q. If you swore a moment ago that you took a special interest in Mr. Banks' fight, you swore to something that is not so, did you? A. No, sir; that is not the way the question came.

Q. I don't ask you about that. A. But you have got to reduce it down into proper form.

Q. I am going to put my question myself. A. If you want an answer, you shall certainly put it in proper form. It is not your guess work over mine. I said this: that in the afternoon I had made a bet with a gentleman that represented the Senator opposed to Mr. Banks of \$20, I betting on Banks, and he betting on Sullivan. After that bet had taken place, of course, I had more or less favoritism for Mr. Banks.

Q. That is it, and I did not quite understand it. Then that bet was made in the afternoon? A. Yes, sir.

Q. Up to that time, when that bet was made, you took a particular interest generally in the Republican ticket? A. Yes, sir.

Q. After that bet was made, it had more influence on you? A. I think I did take more interest.

Q. Then it was in pursuance of \$40 that induced you to take the great interest in Mr. Banks? A. It had an influence, yes.

Q. And that was \$40, was it? A. Yes, sir.

Q. Then the \$40 was what induced you to take this great interest in Banks? A. I haven't stated that I took a great interest in Mr. Banks. You are putting in the word "great." I have not used the word "great." I simply took an interest for the whole ticket.

Q. That was in the morning, was it not? A. That was probably until two or three o'clock in the afternoon.

Q. Then you made this bet; is that right? A. Yes, sir.

Q. And then you took a greater interest in Mr. Banks' fight, did you? A. I wanted to see him get every vote possible.

Q. Didn't you know it was a misdemeanor to bet on elections? A. I had voted the first thing in the morning.

Q. Didn't you understand that? A. I understand that. But having voted, I did not commit a misdemeanor.

Q. You understood when you committed it it was a misdemeanor? A. I knew it was contrary to law; but having cast my ballot, it was not contrary.

Q. I don't care about that. A. Well, I am doing my part of it.

Q. You did bet on the election? A. I did not bet previous to my voting.

Q. Will you answer my question? A. Certainly. I do, but I am qualifying it by saying I had voted before.

Q. I want you to answer it and not qualify it. Did you or did you not know that it was a misdemeanor to bet on election? A. I know that it is contrary to law.

Q. Ain't you a pretty good citizen here? You are not in the habit of doing things contrary to law, are you? A. Well, I do; but having cast my ballot, I thought I was all right.

Q. You thought you could violate the law then, did you? A. Yes, as thousands of others have done.

Q. And you did it? A. Yes, sir.

Q. You are a member of the Republican County Committee, are you? A. No, sir.

Q. You are not particularly interested in Republican politics, other than as a citizen, are you? A. That is all.

Q. You have known Maxwell a long time, haven't you? A. Ever so long.

Q. How long have you known this man Levy that came to you? A. Both Maxwell and Levy and the boys were probably born in the neighborhood.

Q. And you have known them, probably, all the time? A. Yes, sir.

Q. You are pretty friendly with Maxwell, ain't you? A. Yes, sir.

Q. Do you think he is a very nice young man? A. Yes; I have a very high estimate of him.

Q. You don't think he would lie, do you? A. Well, he is pretty impulsive.

Q. Did you think he would go and steal votes when Levy came to you and stated that? A. I only had Levy's statement.

Q. You knew Maxwell, didn't you? A. I knew he was in politics, and men do very foolish things when they are in that.

Q. You are in politics, are you not? A. Not to a very great extent.

Q. For thirty-five years, you said.

MR. DORN: He did not say he took a very great interest.

By MR. CLUNIE: Was it small, or great, or what? A. In my estimation it was great for me; not having the habit of staying out late nights, I took an interest during the day.

Q. As a matter of fact, you took a great interest in politics? A. Yes, sir.

Q. And you knew Maxwell was interested in politics? A. Yes, sir.

Q. And you knew, didn't you, he would steal votes? A. No, I didn't think that. I only stated what was stated to me.

Q. You said Levy came to you and stated what was going to be done? A. Yes, sir.

Q. And that it was work that was going to take votes away from the Republican party? A. Yes, sir.

Q. And that Maxwell was going to do it? A. Yes, sir.

Q. And you have known Maxwell ever since he was a little boy? A. Yes, sir.

Q. And you knew him to be a good man? A. Yes, sir.

Q. And did you think he was going to steal votes, and commit the crime? A. I took the precaution.

Q. And did you think he would do that? A. I didn't give it a thought.

Q. And just on this man's say, knowing Maxwell as you did, you went in there and watched him, and sat around? A. Yes, sir.

Q. And you think that is an honest part to play to a man that you claim to be a friend of? A. As honest people do? That was not the position I was in.

Q. That is the position I put it in. A. I said Maxwell was there as a spy on the Republicans, and I was very cautious, and I was there as a spy on the Democrats at the request of the County Committee, and watching his acts, and that is precisely that position.

Q. What did you think from this man Levy's testimony that Maxwell was going to do? A. Levy, from his statement, if I would believe Levy—I don't know whether it was a fact or not: I only simply give Levy's statement to me—I thought he was going to perpetrate a fraud, and was prepared to do it, and I went there to keep my watch on him.

Q. What kind of a fraud? A. A fraud in not giving Banks the ballots that he was entitled to.

Q. How was he going to do that? A. By probably having the name called off for his friend, when it was not on the ticket, and have the Clerks tally it.

Q. Who was going to do that? A. The Judges or Inspectors.

Q. Who were the Judges? A. I don't know who they were, but they were under the supervision of Mr. Maxwell; he had a great deal of influence with them; I know them personally, but I don't know them by name.

Q. Do you swear that you don't know who were the Judges of Election in that precinct? A. I did not so state. I knew they were Judges and Inspectors of Election.

Q. Do you know who they were? A. I cannot call them by name now. What business have I got to hunt them up?

Q. I ask you to swear. A. I don't want to swear anything about the matter.

Q. I ask you what Judges were going to commit the felony? A. I don't know. In the first place, I haven't stated any Judge was ordered to commit a felony.

Q. You said a moment ago that Levy said Maxwell was going to commit a felony. A. I didn't say anything of the kind. You asked me how it was going to be perpetrated, and I said I supposed it was going to be perpetrated in that way. I don't want you to put improper language in my mouth; and you can put the proper question to me and I will answer it with pleasure; but don't undertake to put words in my mouth.

Q. I asked you what Judge you thought was going to commit a felony at that election? A. I stated that I have not intimated, suggested, or given it a thought or consideration that there was any Judge that intended to commit a fraud, and there was nothing that would justify you in making that observation.

Q. Levy came to you and told you there were frauds going to be perpetrated? A. Yes, sir.

Q. What frauds did you think from Levy's statement were going to be perpetrated? A. That was a matter that would develop itself.

Q. Didn't you tell me a moment ago there was going to be a fraud perpetrated? You testified some time ago there was going to be a fraud perpetrated.

[Here the reporter reads the testimony from two pages back as follows: "What did you think from this man Levy's testimony that Maxwell was going to do." and the answer thereto.]

THE WITNESS: Now, is that what you call saying there was fraud going to be committed?

Q. That is what I think it was. That is your testimony? A. Yes, sir; that is what I thought could be done. That is all a supposition. That is no swearing, either. There is not a word in that language that will justify your observation in saying that it is sworn to; it is merely saying what I thought, and what I supposed could be done.

Q. As a matter of fact, you thought it could be done? A. Yes, sir; but that don't make it so.

Q. That is merely your way of thinking? A. Yes, sir; that is so.

Q. He called them the Democratic people? A. The Judges.

Q. Who were the Judges? A. I don't know. Maxwell can tell you the names.

Q. They are all friends of yours, are they? A. No; I know them by sight. Maxwell can tell you better than I can.

Q. I want you to tell me. A. He was Captain of the Democratic party.

Q. I know that, and he knows that. Why don't you tell me? A. It is not my business to know who the Judges are. I was a citizen, and cast my ballot. I didn't ascertain who the Judges were.

Q. Do you swear you do not know who the Judges were? A. I presume I know who they were, but I couldn't exactly call them; but I will name them now. I know that Mr. Burke was one; he was either a Judge or an

Inspector. I know that Captain Pierce—Nelson Pierce—was one; and I know them all.

Q. Do you know Mr. Alvey? A. Yes, sir; I know Mr. Alvey.

Q. How long have you known Mr. Alvey? A. Oh, I have known him for fifteen or twenty years.

Q. He was one of the Judges, wasn't he? A. Yes, sir.

Q. And Captain Pierce was another one? A. Yes, sir.

Q. James Swain was another one, wasn't he? A. Yes, sir.

Q. Mr. Medau was one of them? A. No, I don't think so. Mr. Swain I know. Mr. Medau I don't think—

Q. [Interrupting.] In order to carry out the forgery that might have occurred that night, it was necessary for one of the Judges to call the name wrong? A. I supposed that was the way it would be done.

Q. You must have necessarily thought that one of those men should call the name wrong, didn't you? A. I thought so; necessarily they must have a way it would be done.

Q. You knew now, under your oath, that one of those gentlemen would do that? A. I didn't think anything about it. The statement was made to me. I placed myself behind the caller and examined every ballot that was called off, and it was all right, and my mind was satisfied, and I didn't give the matter a moment's consideration.

Q. But you reported it to Banks, didn't you? A. I reported to him some time after the election.

Q. What did you want to report it to him for, if it did not turn out or amount to anything, and if you didn't think it would ever amount to anything? A. I don't know how; possibly in the natural course of conversation it came up.

Q. You don't remember about that? A. No.

Q. You don't remember about that? A. I talked about the political contest or like that; many of those instances come along, and no special attention was given to it.

Q. Who did you tell besides Banks? A. I haven't the remotest idea.

Q. Have you been out hunting testimony in this contest? A. No, sir; not at all. I had no more knowledge of it than to-day.

Q. Do you swear you did not go with Mr. Banks and with Mike Smith hunting up testimony in this case? A. No; but I might say this about that, don't you run away with that impression; you need not turn your head and shake your hand, but I say I did not participate in this matter until I was requested to come here yesterday afternoon, and I did not speak to a living soul about the matter. But in relation to the matter of Mr. Levy, I went with Mr. Banks and Mr. Smith to see Mr. Levy in his store to tell him what he stated to me.

Q. What did you want to tell him that for? He knew what it was. A. He was the proper one to tell.

Q. He wanted to know what he told you? A. That was the fact; that was the matter.

Q. What did you go down there for then? A. That is not the way it was exactly. I wanted to have him state if he remembered the circumstance.

Q. You wanted to refresh it with him? A. I wanted the whole thing refreshed in my mind, when I didn't take anybody's part in this fight, or have anything to do with it.

Q. Then Mr. Levy and you had a little talk about what occurred, didn't you? A. I simply asked him if he had stated so and so to me; if he remembered it.

Q. What did he tell you? A. He told me that it was not as serious as he represented at the time.

Q. Didn't he state that to Mr. Levy, and didn't Mr. Levy tell you that didn't occur at all? Didn't Mr. Levy tell you you were mistaken? A. No; if you put it in that language. I don't think he put it in that language. But myself, I can say to you now—

Q. [Interrupting.] Just tell me what you said to Mr. Levy and what Mr. Levy said to you, and that is all I want. A. I told Mr. Banks what Mr. Levy had said to me, and I went there with Mr. Banks to see Mr. Levy.

Q. You told me that seventeen times, and I know it just as well as you do. I want to know what Mr. Levy said. Now, state that, what you and Mr. Levy said when you went to that store that day? A. I am under the impression that Mr. Levy said it was not as serious as I viewed it.

Q. You won't swear that that is the language Levy used, will you? A. I don't know the language he used, word for word. It was not a matter of very great importance.

Q. Don't you know Mr. Levy told you that that did not occur at all, and told you not to go on the stand at all and swear to it, and that if you did you would perjure yourself? A. I don't recollect that at all.

Q. What did he say to you? A. I don't know.

Q. You don't know that he said, but you know he did not say that? A. No, sir.

Q. How long have you lived here? A. For a great many years.

Q. You have held public office here before, haven't you? A. Yes, sir.

Q. What were you? A. I was License Collector.

Q. How did you come to go out of that office? Were you asked to resign? A. Yes, sir.

Q. How did you come to resign? A. Because there was charges made against me that there was a default in the office.

Q. That was about \$150,000 that was missing? A. No, sir.

Q. You were License Collector, and you had charge of the money, and they thought it suspicious that that money was missing? A. Yes, sir.

Q. And that was why you were asked to resign? A. This was something that occurred before you became such an eminent lawyer. I will state to you this: that that defalcation was a newspaper report. It was done for political purposes. There was a committee appointed by the Board of Supervisors to examine my books. They were found correct to a dollar. The matter was submitted to the Grand Jury. It was examined by the Grand Jury, and referred to another Grand Jury, and they reported and threw it out from lack of merit. Now, that is something that you know nothing about.

Q. Let us see if I understand your transaction right. What newspaper was it said you stole and you did not? A. A great many newspapers. It was political excitement during the time.

Q. Give us the newspapers, will you? A. I suppose about some twenty years ago, but you were in your diapers.

Q. You don't claim I got any of it? A. That was the sum and substance of it; that I was License Collector for ten years and over, and it was then in the Board of Supervisors a clique was anxious to get possession of the office and charges were brought against me for defalcation; experts were appointed to examine my books; they did so, and found them straight to a dollar. During the interim they had an indictment; I was held under an indictment, it was submitted to the Grand Jury, testimony was taken

there, they reported that the next Grand Jury would take some action in the matter. It was reported to the next Grand Jury, and they examined it for months and months and the thing was thrown out as worthless, unanimously.

Q. You are all through now? A. Yes, sir; now.

Q. Just tell me the paper that got up this conspiracy at the time. A. It was universal at the time. It was probably all the press—the "Bulletin." I said it was all the newspapers, but I stated it was got up by a political clique of hooters who were anxious to get possession of my office.

Q. Who was the clique? A. There was the boss who was in power, the leader of it.

Q. Who were the leaders?

MR. DORN: I submit, if your honors please, twenty years ago has nothing to do here.

THE WITNESS: I understand his object, and he probably thought it would cast reflection on me and do me an injury, but he is welcome to all that. That is little capital.

By MR. CLUNIE: And you don't want to answer the question about it? A. Yes, I do; but I think it ungentlemanly and uncalled for. I view that as a matter that don't appertain to my evidence within the last election. That occurred twenty years ago, but a man brings that up. He is doing very small business—he is in very small business.

Q. That is your opinion? A. That is my opinion.

Q. Now tell us the newspaper? A. I will refer you back to the record, and I will say I am rather surprised to have both your honors sit here and listen to a matter of this kind.

JUSTICE STAFFORD: We have no authority in this matter at all. We do not sit here in a judicial capacity. We sit here merely as officers who were to take depositions, with no more power than a Notary Public. If we had the power, there would be a great deal of this testimony that has gone in that would be ruled out, but we have no authority to do it.

THE WITNESS: I will say this: Here is a matter referring only to my testimony on the election a few days ago, and the fellow goes to work and tries to cover me over with slime for an act that took place twenty years ago. It is contemptible, mean, and despicable.

By MR. CLUNIE: Will you tell me about it now? A. You go and find out from the record.

Q. What record is it? Indictment record? A. Go back twenty years and ascertain it.

Q. Where will I find it? A. Probably in the City Hall.

Q. What part of the City Hall? A. I don't like to insult you.

Q. That is impossible. A. No, I see that you are pretty callous, anyway; but I really think that I am prepared to answer any question that I can, but when a man is so low and despicable as to go back and try to draw my record out, it is too contemptible to take notice of it.

Q. You think that is an outrage? A. Yes, I do; and I think it is mean and low.

MR. DORN: I will say to you that there is no means of ruling, and that is the reason no objections are made to these questions, and the reason why this kind of testimony is not ruled out. The Justices in this proceeding have no power at all to rule an objection. I state that in defense of the Justices.

THE WITNESS: Well, I am very glad to hear it for the credit of the Court.

By MR. CLUNIE: Just tell me where I can get the record of this? A. You look back on the files of the newspapers twenty years ago.

Q. What newspapers will I find it in? A. You might take the "Bulletin," "Call," and "Chronicle," and all papers that were published at that period.

Q. The "Bulletin," "Call," and "Chronicle," they were the papers that trumped up this charge against you, were they? A. No, sir; I couldn't state that.

Q. The statement that I will find in this paper will be correct, will it? A. I stated they were not correct, but newspapers are not correct. What business have you to bring this up with me? What has that got to do with my testimony on this case? I want you to confine yourself to what is facts, and this thing is a matter that is of no interest in this case. You want to ascertain from me what took place at the last election. You want to sit there and cover me over with slime for an article that was published in a newspaper ten years ago.

Q. I don't want to cover you with slime at all. A. Then why bring this up? What business is it of yours what took place there? If you want any information, go to the record and get it. I tell you this now: I want you to stop this; I don't want you to drag me or this thing out; it is not in this affair, and it is none of your business, and it has got nothing to do with it.

Q. I want to tell you that I am here as Mr. Sullivan's attorney. One of Mr. Sullivan's witnesses came in here and swore to a state of facts, and you have come in and sworn to another state of facts, and it is my object to show that your testimony cannot be believed. A. But I have stated here that my books were correct; that it was proved so by a committee appointed to expert on that, that the case was submitted to the Grand Jury, and it was not acted on; and it was resubmitted to another Grand Jury, and it was unanimously thrown out. Now, that is the foundation, and you can go on, and I will gratify you, showing what your party is.

Q. Who were the Supervisors that put up this job on you—

MR. DORN [Interrupting]: If you can remember.

A. Yes, I can remember. I cannot think of the name, but he was President of the Odd Fellows' Bank, and was disgraced afterwards himself. He was Supervisor from the Eighth District. I don't recollect the name. I would recollect the name if I heard it. He was President of the Odd Fellows' Bank, and he broke the bank up and got in with Ralston, and he broke that bank up and got disgraced himself and went out of the city.

Q. Didn't Ralston have a hand in these charges against you? A. No, sir; this was the Chairman of the committee, and the principal man in the Board. I will probably think of the name before you get through, and give you the name.

Q. Did Ralston have anything to do with the charge? A. No, sir; he did not.

Q. Just tell us the specific-charge, as near as you can? A. The charge was for the mal-appropriation of the funds.

Q. What amount was stated? A. The amount was stated variously, but the amount was not a ten-cent piece.

Q. What was the amount they claimed you got away with? A. What was said in the paper at the time was a very large amount of money.

Q. Was it \$150,000? A. No, sir.

Q. It was over \$100,000, wasn't it? A. No, sir. I don't recollect what the amount stated was. It was on the verge of a political election—primary election—and there was a good deal of rumor about it.

Q. From your best knowledge, how much was the amount they claimed you got away with? What was the rumor about it? A. I don't recollect, but according to the facts of the case there was not a ten-cent piece.

Q. What did the newspapers say about it? A. I don't recollect. I read it. I think it is a shame.

Q. Well, we think it is a shame when you say one thing when another witness swears to a different thing. A. I appreciate your fine art business.

Q. Now, tell us again what the newspapers said—what amount? A. If you want anything further on that question, you will have to go and get the records, and you can't get it from me.

By MR. DORN: I ask your honor to instruct this witness that he is not required to answer any question which will hold him up to public disgrace or ridicule. That is the privilege of a witness in any tribunal.

THE WITNESS: No, I will withdraw that. I am willing to answer any question. If that is his object, I say there is nothing which could hold me up to public disgrace or ridicule, because it is a matter that has been finally settled, and settled in my favor, and if that is the case, I will withdraw the objection, and I will answer any question they ask.

[Here the reporter reads the last question of counsel for respondent, as follows: "Now, tell us again what the newspapers said—what amount?"]

A. There was various amounts; probably from \$100,000 to \$20,000, \$10,000 or \$5,000.

By MR. CLUNIE: That charge was made against you in the newspapers? A. Yes, sir.

Q. Where were you at that time? A. In the city.

Q. You didn't leave the city at all? A. No, sir.

Q. And after it was made you did not leave? A. No, sir.

Q. It was claimed that you did that as License Collector? A. Yes, sir.

Q. When the charges came out in the newspaper, the Grand Jury was then in session, was it not? A. No; I don't know whether it was in session or not; no, I think it was not. It was a long time after that before the Grand Jury was empaneled.

Q. Who were the experts that examined your books? A. The Board of Supervisors.

Q. Who were they? A. I don't know the names now, but I think Col. Wiggins was one.

Q. And you don't remember the other one? A. No, sir; I do not. I know they were appointed by my enemies in the Board.

Q. You were a Republican then, weren't you? A. Yes, sir.

Q. That was a Republican Board, was it not? A. No, sir.

Q. It was a Democratic Board? A. No; it was a Board of the People's party.

Q. The People's party? A. Yes, sir.

Q. They had a reformation here then, hadn't they? A. Yes; something of that kind.

Q. And this was the reform ticket that put up this job on you; is that it? A. That I don't know. It was principally from one man in that party; I forget his name, and though I had it in my mind a moment ago that that was the gentleman from the Eighth District. He was anxious that I should make some appointment which I refused to make for him.

Q. How long was it after those charges were made that you resigned as License Collector? I think probably it jogged along a month or two.

Q. A month or two after this, then, you resigned? A. Yes, sir.

Q. You hadn't taken anything? A. No.

Q. There was nothing in the charges? A. Nothing.

Q. And you gave in your resignation? A. Yes; I think that is about the substance of it.

Q. Don't you know? A. Well, now, that is a long time ago and it is a matter—

Q. [Interrupting.] It was a matter of great importance to you, wasn't it? A. It was a matter of great importance to me at the time, and everything pertaining to it was then fresh in my memory, but it is a matter I have forgotten all about.

Q. Do you remember how you come to resign? A. I am under the impression that my resignation was asked for. That I cannot positively say, whether it was asked for or whether I tendered the resignation.

Q. Whether you tendered it or whether it was asked, you cannot swear? A. No. I cannot say positively.

Q. Don't you know, as a matter of fact, that these people came to you and told you that if you did not resign they would go at you and prosecute you criminally in this matter? A. I don't know anything of the kind, because the thing did not take place, and because that is entirely voluntary on your part.

Q. That did not take place? A. That did not take place.

Q. How do you know? A. I simply say to you again that that is twenty years ago, and I was twenty years younger then, and my memory was better then than it is at the present time.

Q. The only thing is I want to get these people here. A. The most economical thing is, you can hunt it up, and you can interview me tomorrow, and you will have an opportunity of getting it to your own satisfaction.

Q. I only want to get your statement of it. A. I can say that on matters of that kind my memory is a little treacherous. Not on facts, but on newspaper squibs it may be.

Q. But you know there were charges, and that the newspapers published those charges, and then you answered? A. I think it was on account of those charges, and I don't think I would have resigned if it hadn't been for those charges.

Q. Don't you think if the Grand Jury ignored the bill, and threw it out, and you were exonerated and you resigned, that it was a little strange? A. This is some time when it was ignored, and the Grand Jury had decided that there was no merit in the case; this occupied months and months, and it went before two Grand Juries, and that embraced probably six or eight months.

Q. Then without waiting to find out whether the Grand Jury would ignore it or not, or whether the public would sustain you, when the charges were brought you resigned; is that it? A. Whether, as a matter of fact, I did resign, or whether I was requested to resign, I don't recollect.

Q. There was a resignation about it, was there? A. There was a resignation, because the Board of Supervisors at that time had the appointing of the officers, and a majority of the Board were against me.

Q. What time did that occur? What was the year? A. Really I cannot call it to mind now. I think it was about twenty years ago.

Q. And this is all you remember? A. Yes, sir.

Q. At this conversation you had with Mr. Levy, wasn't this what was said: Didn't Mr. Levy tell you that Maxwell didn't make any proposition to count Banks' vote for Sullivan, but that he (Levy) had several disputes

about votes with the other party, and he came near coming to blows, and he asked you to send some one or get some one to watch, as he was afraid they would count Banks out? A. No, sir, that was not the conversation as it occurred.

Redirect Interrogatories.

By MR. DORN: As a matter of fact, didn't Mr. Levy, when you had this conversation with him, tell you that he was afraid to come here and testify, because he was afraid of that crowd, and that they would do him some harm? A. No, sir; he did not.

Q. You knew this precinct was one where Mr. Maxwell had charge, wasn't it? A. Yes, sir.

Q. That is a precinct which, on the recount, the Republican candidate for Recorder gained eighteen votes, was it not? A. Yes, sir.

Q. And out of which he had been defrauded? A. Yes, sir. I heard so; I don't know it. I saw it in the paper.

Q. That precinct was under Mr. Maxwell's special guardianship, was it not? A. I could not say.

Q. He was the Democratic Captain there? A. Yes, sir; he was a very active man, and appeared to have charge of the interests of the party there.

Q. Do you know a man named Hussey? A. Yes, sir.

Q. He was also in charge there, wasn't he? A. Mr. Maxwell and Mr. Hussey were always together, and appeared to watch for the party.

Q. He was a Democratic watcher there? A. Yes, sir.

Q. You were asked if you had any reason to distrust Maxwell. Now, I ask you if you had any reason to trust Hussey? A. I don't know as I can answer that question very well. I had no reason to distrust either. I only simply heard this stated to me, and I thought I would take the necessary precautions to do it, but I neither had distrusted Hussey nor Maxwell.

Q. As a matter of fact, you did not say or understand that you mistrusted either one of them, but you were put on your guard, and you thought it well to take steps to look out for it? A. Yes, sir; that was it.

Q. As far as it fixed the criminal or the crime? A. No, sir.

Q. But you thought to use an ounce of precaution was better? A. Yes, sir; I hadn't any suspicion of Mr. Maxwell or Mr. Hussey.

Q. As a matter of fact, Mr. Levy, that gave you this information, was only a Clerk? A. Yes, sir.

Q. And for any pretext which was considered proper by the majority of the Election Board, he could have been discharged at any time, and some one else put in his place; that is the rule, is it, for Clerks in the election precincts, isn't it? A. I don't know. I haven't examined into the power of the Board to act on that matter.

Q. Without distrusting any of the watchers, or without distrusting any of the callers, wouldn't it be possible that the wrong could have happened by the collusion of the Clerks tallying wrong, even if Maxwell were honest, and even if Hussey were honest, even if the Inspectors were honest, and the Judges were honest? Couldn't a wrong have occurred by collusion among the Clerks tallying wrong? A. Certainly.

Q. So you were afraid of connivance, by which the wrong could have come? A. Yes, sir.

Q. And there might have been a number of ways by which a fraud could have been committed? A. Certainly.

Q. And, as I said before, without specifying the person, or the exact name of the crime, you thought it your duty as an active Republican to go down there and see what happened, and you did so? A. Yes, sir.

Q. You heard Mr. Maxwell's testimony here, did you not? A. No, sir.

Q. I will state to you that Mr. Maxwell testified that this Mr. Hussey was a volunteer at that place, and that he was not paid anything for his services. What was the political record of this man Hussey, with regard to a change of base? Two years ago he was a Republican, wasn't he? A. Yes, sir.

Q. At the nominating convention Mr. Hussey was a candidate for the position of Senator against Mr. Banks? A. Yes, sir.

Q. And upon being defeated for the nomination he became immediately an enthusiastic Democratic worker? A. Yes, sir.

Q. And you therefore had no special reason to confide in his integrity, would you? A. No. I would like to state that as a delegate to the convention and a candidate, I voted for Mr. Hussey against Mr. Banks in the convention.

Q. Isn't it supposed if a man is honest, and if he is an honorable man, and he comes up in a convention, and is a candidate for nomination, and another man secures the nomination, that that man, at least if he does nothing for his rival, will not turn around and work against him? A. Most certainly. I think that is a very dishonorable transaction myself.

Q. Isn't such a thing a very dishonorable transaction? A. I view it in that light.

Q. Isn't it at least the part of an honorable man to acquiesce and be silent, at least, if he did not assist his successful candidate? A. I wouldn't countenance it myself.

Q. In political circles, and among people generally, isn't that regarded as a dishonorable transaction? A. Certainly; I would not countenance any man that pursued that course.

Q. And as a matter of fact, this Mr. Hussey was there without compensation, and a free giver of charity, as Mr. Clunie said, he was there without compensation, and giving his time for the benefit of the Democratic party? A. I don't approve of it.

By MR. CLUNIE: You don't claim to be an expert on honor, do you? A. Well, I am only speaking my own feelings about the matter. I don't speak for anybody else.

[Here the further hearing was continued until to-morrow morning at ten o'clock.]

SEVENTH DAY.

SAN FRANCISCO, CALIFORNIA,)
WEDNESDAY, January 9, 1889—10 o'clock A. M. }

ALEXANDER CAMPBELL, JR.

A witness called for respondent, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Mr. Campbell, where do you reside? Answer—No. 1415 Mason Street, in this city and county.

Q. How long have you lived there? A. About fifteen months.

Q. How long have you lived in this city? A. Somewhere about thirty-seven years; thirty-six or thirty-seven.

Q. You have a voting residence? A. Yes, sir.

Q. Where were you on election day? A. I was in the Thirty-third Assembly District, Precinct No. Six.

Q. What were you doing? A. I voted there and represented the interests of the Republican party.

Q. Whom did you find there on that day representing the interests of the Democratic ticket, if anybody? A. You might say their name was legion. One in particular was Mr. Doran.

Q. Do you know what his first name is? A. I think they called him Fancy.

Q. He is a deputy in the Sheriff's office, isn't he? A. He was; yes, sir.

Q. Who else did you see there? You say their name was legion. Just give the name of a few of the legion of Democratic hosts there corraling voters? A. I don't know anything about any of the others corraling voters there. I know nearly everybody around there, but don't know them by name.

Q. What did you see Mr. Doran, this Deputy Sheriff, do in the way of corraling voters? Just give us the whole thing. A. I went to the polling place about half past-six that morning; Mr. J. J. Lynch, representing the Republican side of the house, was there attending to his duties as challenger.

Q. Is that the Mr. J. J. Lynch who testified on the stand here? A. I am so informed; yes, sir. About half past-six that morning I went there, and I relieved Mr. Lynch, and I remained there some time—probably two or three hours. Subsequently I went away, and I am living right around the corner from the polling place, and I made my house headquarters for the day. I received reports from our friends who were working in our interest, doing whatever was necessary.

Q. What were the reports that you received? Give us the reports that you received. A. About eleven or half-past eleven in the daytime, the report came to me that Mr. Doran was buying votes. I insisted in knowing then whether that was simply a report or whether it was true that he was doing that. I had received a report from my brother, whom I had there representing me and helping also the County Committee as a ticket peddler. I had him watch the matter and see that there could be no mistake about it. He reported to me, and called my attention to it. I opened the blinds of my house, which was just within fifteen or twenty feet of the polling place—probably thirty feet from the polling place—and I took my station at the window there, and saw Mr. Doran, saw him bringing men along, taking them into the side place, furnishing them—furnishing, I would say, one with a ticket—a man whom I knew that I had never seen in that precinct or in that district before. I saw the man go around the corner and come back in a few minutes—go in some place, and Mr. Doran handed him some money.

Q. Did you see him hand him the money? A. I saw him put his hand in his pocket, take out something, and the man went away with it. Then I left.

Q. As soon as he put his hand in his pocket to take something out, the man went away with it, did he? A. Yes, sir; of course, he did.

Q. What else did you see on that day about votes? A. That is all. I then became satisfied it was not a square fight, and I didn't know in what interest Mr. Doran was, except in the interest of the Democratic County Committee.

Q. You knew that he was a Democrat? A. Yes, sir.

Q. You knew that he was representing that County Committee there? Yes, sir.

Q. It is so testified here on the stand? A. Yes, sir.

Q. What else did you see in that precinct on election day? A. That is all. I made my house my headquarters and remained there most of the day, because you can readily understand, while you have got the management of any particular thing you are moving from one place to another and bored to death, and you get pretty tired by the time the polls close.

Q. Mr. Doran was very active about the polls there during the day, was he? A. Yes, sir.

Q. Whether you saw him giving money or any other consideration, did you see him bringing any other voters to the polls? A. That is the only one.

Q. How did this J. J. Lynch that you mentioned happen to be acting for the Republican primaries there, acting for the Republican party? A. At my request Mr. Lynch was appointed Inspector of the primary election in the Sixth Precinct of the Thirty-third, where I was a candidate as a delegate to the convention.

Q. At whose solicitation or by what influence did he receive his appointment as Sergeant-at-Arms of the Republican Convention held in this city? A. At mine.

Q. You made his nomination and secured him the place? A. I obtained the place for him; yes, sir.

Q. He has also testified on the stand that he acted as a Republican challenger on election day, and I believe you also confirm that? A. Yes, sir.

Q. Who was that obtained by? A. That was obtained by the Republican County Committeeman and myself.

Q. Had Mr. Banks anything, either directly or indirectly, to do with securing Mr. Lynch these places, or any one of these places? A. I know Mr. Banks was trying to get another man, particularly for Sergeant-at-Arms of the convention, solicited from me another man, but I put Mr. Lynch in, because I recognized Mr. Lynch's service previously to the Republican party.

Q. Then Mr. Lynch had no reason to be grateful to Mr. Banks there because of any help he had for any position? A. Not as I know of.

Q. On the other hand, hadn't he reason to be resentful toward Mr. Banks for having favored some other candidate for the place? A. I should think so, decidedly.

Cross Interrogatories.

By MR. CLUNIE: I understand you that Mr. Banks had been against giving Mr. Lynch any representation at the primary at all? A. Not at all. Mr. Lynch's friends asked me to get him the appointment of Sergeant-at-Arms of the Republican Convention. Mr. Banks came to me and solicited me to have James Gallagher appointed as a Sergeant-at-Arms. I took both names, and I handed in Mr. Lynch's name to the member of the Committee on Permanent Organization, and I did not hand in the other man's name.

Q. Did you tell Mr. Banks that Mr. Lynch was your man? A. I did not.

Q. Why did you have any reason to support Mr. Lynch in preference to the other man? A. From the fact of knowing that he had rendered me very valuable services at the primary previously.

Q. Then you would have thought, as a reasonable man, after the holding of that convention and after the nomination, that he should have felt resentful to Banks. A. I should not think he would feel as friendly as if it had never happened.

Q. You didn't think he would have got out and worked against him? A. Under the circumstances, I would say Mr. Lynch would have no reason to expect anything from Mr. Banks.

Q. If you had been in Mr. Lynch's place you would not have felt like going about and doing anything for him, would you, after he tried to beat you? A. I should feel that way myself a little.

Q. You would have felt resentful? A. Yes, sir.

Q. After all that happened, wouldn't you think if Lynch went around and did all he could for Mr. Banks, that something had happened since? A. Not at all, because my relations with Mr. Lynch were that he would do anything he could for me, and as I was very much interested in Mr. Banks, that he would naturally be the same way.

Q. You asked him (Lynch) to help support Banks? A. There is no doubt about it. We had a great many consultations as to what to do to get the opposition vote.

Q. You had an interest in Mr. Banks' fight? A. I was the Chairman of the convention that nominated him and put him in nomination, and I ought to.

Q. You were a member of the Republican County Committee? A. No, sir.

Q. You were in charge of the precinct for the Republican County Committee? A. No, sir; I was not. I was there doing whatever I could.

Q. Who put you in charge? A. I did myself.

Q. You put yourself? A. Yes, sir.

Q. And everybody recognized you? A. There were several of us there; there were half a dozen there.

Q. I understood you were recognized as the chief there? A. Not at all. I had charge of my precinct, the same as any other Republican would that would exert any influence at all, that would interest himself on behalf of the Republican ticket.

Q. Don't you know that people appointed by the Republican County Committee would naturally be in charge? A. There is no doubt about that.

Q. Was there anybody appointed up there by the Republican County Committee? A. Yes, sir.

Q. Who were they? A. Mr. Lynch was one and Mr. Campbell, my brother, was another. Those are two that I know of. Mr. Jones, the County Committeeman, had charge of that precinct, as he did of that district—that end of the district particularly—three precincts.

Q. Yet you took the whole charge of it? A. Not a bit. I used whatever influence I had, and whatever was necessary I would do, and I was doing it entirely in the interests of the entire ticket from top to bottom.

Q. Mr. Lynch stated, when he was on the stand, that he asked his friends particularly to vote for Mr. Banks. I understand that whatever he did he did it for you. A. No. I understand what he did for Mr. Banks he did for me.

Q. And whatever you did, you did at the request of Mr. Banks? A. It was not understood, but whatever we did, we were for the whole ticket.

Q. Were you all just working for the whole Republican ticket? Was Mr. Jones? A. Jones was speaking about everybody.

Q. Did you say to Lynch, "We want to make a particular fight for Mr. Banks?" A. That was understood.

Q. How was it understood, if you didn't say it? A. I was running in the interests of Mr. Banks for Senator.

Q. Was it understood, after the nominations in the Republican party had been made, that you would support every nomination, and that you would get out and take a special interest in Mr. Banks' fight? A. I took a special interest in Mr. Banks' fight, and I asked Mr. Lynch to do the same. I didn't say to Mr. Lynch: "Here, stand in for Mr. Banks;" but simply, "coöperate with me."

Q. I understand you; you had never asked Mr. Lynch particularly to vote for Mr. Banks? A. No, sir.

Q. Nor to work for him? A. No, sir.

Q. You did ask him on behalf of the whole ticket? A. I did ask him on behalf of the ticket, and, as I say, special attention to be paid to the Banks vote.

Q. You did say that? A. Yes, sir, we did, and we frequently met in the State Central Committee rooms and other places and talked it over.

Q. Did you meet him at the State Central Committee? A. Well, that and other places.

Q. How frequently did you meet him there? A. I can't say that, of course. Of course I was interested in it, not that I was an office-seeker or anything of that kind.

Q. And you met Mr. Lynch frequently at the State Central Committee rooms? A. Yes, sir.

Q. Are you in the habit of meeting him there? A. Oh, yes, sir.

Q. He was in the habit of consulting with Mr. Estee and others? A. He was not. He was there and I presume they had some use for him.

Q. You don't know what he was doing there? A. I do not.

Q. On election day you say he went up to the precinct? A. To the Sixth.

Q. He was a member of the Board there, wasn't he? A. He was a challenger.

Q. Wasn't he a member of the Board? A. He was, partly. I think he was.

Q. Wasn't he one of the members of the Board of Election? A. I think he was.

Q. Wasn't it at your solicitation, and didn't you see that he got it? A. Yes, sir.

Q. Did you ever ask to have Mr. Lynch appointed a member of the Board of Election? A. No, sir. The only thing that I was consulted about was as to whether he should be put on as a challenger with Mr. Jones, the County Committeeman. That was all.

Q. That was all you had to do with it? A. That was all.

Q. What had Mr. Lynch to do up there? Do you say he was looking out for the interests of the Republican party? A. I saw him there attending to his duties as challenger, excepting a little while I relieved him in the morning.

Q. He was there as challenger? A. Yes, sir.

Q. And all day? A. Whenever I saw him.

Q. You were there all day, weren't you? A. No, sir. I was there after half-past eleven or twelve o'clock. I returned home and remained there.

Q. And you didn't come out again to see what was going on? A. I didn't come out until after the polls closed.

Q. And you were in charge as the head manager of the Republican party until the polls closed? A. I was not the head manager of the polls at all in any sense of the word. I was simply there in the interest of the ticket, and had an interest in Mr. Banks, and I was looking out for that district.

Q. You were there in behalf of Mr. Banks? A. I was there, yes, sir.

Q. Wasn't it on behalf of Mr. Banks? A. No, sir; I said I was there on behalf of the ticket. I said I had a special interest in advocating Mr. Banks.

By MR. DORN: Hadn't you also a special reason for advocating Mr. Morrow at the time of election? A. I had; yes, sir.

Q. You were Chairman of the Morrow Invincibles? A. Yes, sir.

By MR. CLUNIE: You are pretty well acquainted up in that precinct, ain't you? A. No, sir; I was not.

Q. You don't pretend to know every man in the precinct, do you? A. No, sir; I do not.

Q. Then you didn't think it strange that a man should come up to vote with Mr. Doran and you not see him before? A. I was there for the last fifteen or eighteen years, and know just as well as you do what it was, probably.

Q. Did you think it very strange that you should not know a man that came up and voted at that precinct? A. If I didn't know anything of how the thing was done, I would say it is an ordinary thing.

Q. Answer the question again. Did you think it strange for a man to come up there and vote, that you didn't know? A. Not a bit.

Q. You watched Mr. Doran pretty carefully, didn't you? A. Only in that one instance.

Q. Only in that one instance? A. That is all.

Q. You just saw him doing it with one man? A. That is all.

Q. How long did that take? A. Probably not more than a minute or so.

Q. You didn't hear what he said? A. Oh, no. I was in my house and he was right below.

Q. You are right underneath there, ain't you? A. Right underneath. The polling place was, I think, about thirty feet away from my home.

Q. Do you know Mr. Doran very well? A. I am not personally acquainted with the gentleman, but I have known him for years by sight.

Q. You thought he was committing a felony buying votes, did you? A. It looked that way to me; yes, sir.

Q. Then you are willing to swear Mr. Doran committed a felony at that time, are you? A. I was satisfied he was doing something that was not entirely legitimate.

Q. What made you think that? A. From the fact that he was doing it in such a secret manner, and not letting everybody see what he was doing.

Q. Haven't you frequently called people out down at the Police Court, and talked with them privately? A. Not frequently.

Q. Haven't you frequently taken men out and talked with them down there? A. Yes, sir.

Q. You don't think there is anything particularly wrong in taking a man out and talking with him privately, do you? A. No, sir.

Q. Then you saw him go down in his pocket? A. Yes, sir.

Q. And you don't know what he took out? A. No.

Q. You don't know what his object was? A. No.

Q. And all you know is that he went down in his pocket and afterward the man left? A. I know that he went with something around the corner and got it.

Q. How do you know what he went for? A. I don't know.

Q. You said he went for something. A. I said he went with something and got something; something that looked to me like an election ticket.

Q. You thought in your own mind Mr. Doran was trying to bribe him?

A. I had been informed that Mr. Doran was buying votes in that precinct, and from information I received I thought it was true.

Q. And you now think from his conduct it was so? A. Yes, sir.

Q. And you have told us all about it? A. Yes, sir; that is all.

Q. What was Mr. Lynch doing besides challenging? A. While I was there he was not doing anything else.

Q. You saw him all the morning? A. From eleven to twelve.

Q. And you didn't go back there at all? A. No, sir.

Q. And didn't come back until the polls closed? A. No, sir.

Q. Was Mr. Lynch paying any attention to the Republican ticket? A. When he was not on duty as Republican challenger I don't know what he did, but while acting as challenger he did nothing, I know, but acting as challenger.

Q. You saw him have the Republican tickets in his hand? A. No, sir.

Q. You went, as I understand it, and asked Mr. Jones to put Mr. Lynch at work as challenger, did you? A. In making up the names of the persons who were to be designated for that purpose, I suggested it to Mr. Jones. I was consulted about it.

Q. You named him? A. We had considerable talk about Mr. Lynch.

Q. What was that for? A. I wanted to know for what position he would be best fitted; whether inside or outside. I came to the conclusion that he would be best fitted for challenger, and that was what Mr. Jones thought.

Q. What did Mr. Jones say? A. I know he put him on his list, and he subsequently appointed him.

Q. Did Mr. Jones tell you that he intended to appoint him? A. Yes, sir.

Q. He told you that he had intended to appoint him? A. There was no question about Mr. Lynch being a proper man to act on that day.

Q. Jones knew Lynch, didn't he? A. Mr. Jones knew Mr. Lynch before I knew him.

Q. Yet you thought it was necessary to recommend him to Mr. Jones? A. Yes, sir.

Q. And you say Mr. Jones knew him before you did? A. Mr. Jones didn't know the work Lynch did in the primary.

Q. What did he do? A. He took the whole management of my fight for delegate to that Republican Convention, and won it very handsomely.

Q. What did he do? A. He got men to come there and vote. That is all I know about it.

Q. That is not anything, is it? A. It is a very hard thing to get good men to vote at the primary.

Q. You wanted good men, did you? A. I expected the legitimate vote. I know what I wanted.

Q. You were a candidate, you knew, and you did not know how it was conducted? A. Not that at all. I am not a green hand myself. I have been at the business a long time, and I know something about the business.

Q. You left it in the hands of Mr. Lynch? A. I was working there all day.

Q. When you were making that fight it was understood you were making it in the interest of Mr. Banks? A. It was so understood; yes, sir.

Q. Wasn't that the reason Mr. Lynch made the fight for you? A. He made it for me; yes, sir.

Q. And you were for Banks? A. Yes, sir.

Q. You are an attorney at law? A. Yes, sir.

Q. And have been for how long? A. Fifteen or sixteen years.

Q. And you have lived here how long? A. Thirty-six or thirty-seven years; all my life.

Redirect Interrogatories.

By MR. DORN: I understood you to say in response to a question just now, that Mr. Lynch made this fight for you at the primaries, because he knew you were for Banks. Did you so state? A. He knew that I was there in the interest of Mr. Banks; yes, sir.

Q. Did he make the fight for you because you were for Banks or for yourself? A. He made it for me, at my request, of course.

Q. You knew what it was necessary for Lynch to do at the primaries, and it was necessary to get people to come and vote for the ticket? A. Yes, sir.

Q. And it was necessary to get all of your friends and all of your friends' friends to come out and vote, in order to beat the other fellow, wasn't it? A. There is no doubt about that.

Q. You mentioned about going over the list with Mr. Jones. As a matter of fact, it is necessary for the County Committeeman to appoint a considerable number of men, some five or six from each precinct, isn't it? A. Yes, sir.

Q. And sometimes it is difficult to get good men who will do their duty honestly and faithfully at the general election, isn't it? A. Very hard, indeed.

Q. And in going over the list with Mr. Jones, that was your attempt—to get that kind of men? A. Yes, sir.

Q. That was the reason you went over the matter a considerable number of times and went back and forth relative to each person seeking appointment? A. Yes, sir.

Q. You say you heard Mr. Doran was buying votes at the election? A. Yes, sir.

Q. Did you hear how many, or did you hear whether it was a general or common thing, or whether he had only bought one or two? A. I can't tell as to the number. I say it was simply reported to me that Mr. Doran was doing that business.

Q. It was reported to you by people who were there on the committee, and whose business it was to attend to anything of the kind? A. No, sir; my brother told me, but it was common talk there that that thing was being done.

Q. It was common talk there that that thing was being done, and that Mr. Doran was the man that was doing it? A. Yes, sir.

Q. You say you were active up there for the Republican party and active for Mr. Banks, and in the interest of Mr. Morrow in the last campaign. Did you receive any money from Mr. Banks?

MR. CLUNIE: I don't claim that he did. I will admit that he did not. I don't think that Mr. Campbell did. It can go on record that I don't think Mr. Campbell was paid for his services at all.

THE WITNESS: I want to say another thing, that Mr. Lynch never received anything at all.

MR. CLUNIE: I don't want you to go any further, but as to Mr. Lynch I am the least bit doubtful about him.

LOUIS PISTOLISI.

A witness on behalf of respondent, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Where do you reside, Mr. Pistolisi? Answer—I live at 1126½ Filbert.

Q. How long have you lived there? A. Going on about six months now.

Q. How long have you lived in this city? A. All my life.

Q. You were born and raised here? A. I was born and raised here.

Q. Where were you on election day? A. I was in the Fourth Precinct of the Thirty-fourth.

Q. What position, if any, did you occupy there? A. Additional Inspector.

Q. As Additional Inspector, what duties did you perform there? A. I attended to the ballot boxes there certain parts of the day.

Q. About what part of the day? A. About half, I guess.

Q. It is the duty of the Additional Inspector to relieve the original Inspector and to take the ballots when he was absent? A. Yes, sir.

Q. The duty of an Inspector at an election is to receive the ballot from the voter and to deposit it in the box in the presence of everybody? A. Yes, sir.

Q. And the Judges examine the name while that is being done? A. Yes, sir.

Q. That is the duty which an Inspector discharges at the polls? A. Yes, sir.

Q. What time of day were you acting as Inspector? A. I was acting sometimes in the morning; sometimes in the afternoon. I don't remember the hours.

Q. Who was there when you were not there? A. William Harman.

Q. Do you know a man by the name of George Ryan? A. Yes, sir; I do.

Q. How long have you known him? A. I don't know exactly how long I have known him. I have known him a pretty good while.

Q. You have known him a number of years? A. Yes, sir; I have known him a number of years.

Q. How long have you seen him there? A. Pretty often.

Q. He was a man whose face you are very familiar with, and about whom you would not be likely to be mistaken? A. No, sir; I would not.

Q. You were present in this Court when George Ryan testified, a few days ago, were you? A. I was; yes, sir.

Q. He is the same one? A. He is the same man.

Q. Were you present at the polls, acting as Inspector, about three or four o'clock? A. I was in the afternoon, but don't exactly know what time it was. I know I was there certain hours in the afternoon.

Q. How often was Ryan around the polls during election day? A. I am positive I saw him around there three times anyway, during the day.

Q. What was he doing? A. I don't know exactly what he was doing, except in one instance I am pretty positive of.

Q. He was a pretty active Democrat around there, was he not? A. Yes, sir.

Q. And one of his duties was rustling up voters during the last election? A. That I am pretty sure of.

Q. That was what he was around there for? A. Yes, sir.

Q. And about three or four o'clock in the afternoon, but you can't be positive as to the exact time, you saw him at the polls? A. Yes, sir.

Q. Who was with him? A. The first time I saw him there, I didn't see anybody with him. He came around and looked around and walked off. The next time he came down again and I saw him standing around, and I am pretty positive Mr. Maxwell was there also.

By MR. CLUNIE: Which Maxwell do you refer to? A. This William Maxwell over here [indicating William Maxwell], and there was a gentleman come up and I believe his name was Thomas Barry. I looked at him, and he didn't strike me as being the gentleman, because he had on a hard working suit of clothes, and it was just the hour he should be working, and he was a baker and I didn't notice flour on him, and he come up to the polls there, and I saw Ryan and Maxwell standing there.

Q. You think Maxwell was there? A. Yes, sir, he was there; and I saw him standing there; and I thought, "This man cannot be Thomas Barry."

Q. Had you known Thomas Barry? A. No, I didn't know him: so I asked him, "Are you sure your name is Thomas Barry?" so that created a giggle among the Clerks in the room there, and Mr. Ryan poked his head up and said, "That is all right; that is Mr. Barry; that is all right; he is Mr. Barry." I said, "All right, if you say so, in she goes," and I put the ballot in the box.

Q. Was the man challenged? A. No, sir; he was not.

Q. Did Mr. Ryan, when he said, "This is Mr. Barry," say anything about his living in his house? A. No; he didn't say anything about his living in his house. He said, "That is all right; his name is Barry."

Q. That is all he said? A. That is all.

Q. You say you are not positive whether Maxwell was present or not? A. No, I am not positive.

Q. What is your best impression about that? A. My best impression is that he was there, and I know one time he came in the morning.

Q. What was that occasion? A. One of the Marshals' brothers was there, and he came up to vote, and I saw Maxwell with him too, and that struck me as strange, Maxwell rushing those fellows around.

Q. You thought it was a little bit peculiar Maxwell was rushing fellows up to vote? A. Yes, sir; and I thought he had voted already, and I said in a joke, "You have voted already, haven't you?" And his brother happened to come down, and stood there a few minutes, and I had the man's ballot in my hand, and I said, "You have voted already, haven't you," and he turned around to the Clerk, and just as he gave the name to the Clerk, his brother came up and pulled him away, and said, "You have voted already," and so he pulled him out.

Q. And Mr. Maxwell brought him up? A. I don't know whether he brought him up, but I see him come down with him.

Q. Did he talk with him? A. I didn't see him talk with him.

Q. The fact that his brother took him away the second time, and the fact that he said he had voted already, raised your suspicion, did it? A. Yes, sir.

Q. Then, in the afternoon, when Ryan appeared and went away, and the person came back, you thought it was a circumstance sufficient to cause you to ask him if his name was Barry? A. Yes, sir; the reason I did that was because Mr. Smiley told me to particularly look out for Maxwell and Ryan. Those two, in particular.

Q. You had instructions to look out for Maxwell and Ryan? A. Yes, sir.

Q. And that they were liable to do this kind of business? A. Yes, sir.

Q. And you were on your guard against them? A. Yes, sir.

Q. You were present in Court the other day, you say, when Ryan testified? A. I was.

Q. At that time, the question was asked Mr. Ryan whether you were present at the time this occurrence transpired, was it not? A. I don't think it was asked him about my being present. I don't think you asked him the question if I was present.

Q. Your name was mentioned and Mr. Maxwell's name was mentioned in the testimony. Did you have any conversation with Maxwell immediately upon adjournment of the Court and before you got out of the room? A. Yes, sir.

Q. Tell us what it was, will you? A. I suppose he surmised I was going to testify from the question you asked Ryan, because I was sitting alongside of you, and he come up to me and said, "Look here, Pistolisi, if you go on the stand and testify, I am going to have you arrested for perjury," and I said, "You cannot do it, because I will tell the truth and what I know is positive," and he started in to say he would bet \$20 that he was not around there, and I said, "I am positive you were there." Then Mr. Smith came up and said, "That is right, Pistolisi, don't stand any bluff," and they walked out in the corridor and had it out.

Q. In other words, the attempt was made to bulldoze you from giving your testimony? A. I guess that was what it was done for.

Q. And it was done in the Court-room before you got out of the place? A. Yes; I don't know what it was done for.

Q. You didn't get intimidated very extensively? A. No, I don't think I did.

Cross Interrogatories.

By MR. CLUNIE: What is your business? A. I am solicitor for my brother Frank at present, in the coffee and tea business.

Q. Where is his place of business? A. I think it is 1310 Stockton and Broadway—a tea store.

Q. You don't know the number of your brother's place of business and you are working for him? A. I think it is 1310 Stockton Street, but it is not necessary for me to know his number if I went to solicit for him.

Q. What do you do? A. I go to them and find out whether they want coffee or not, and then I take them up to my brother and introduce them.

Q. Then you know where his store is? A. Certainly, but I don't know the number.

Q. How long have you been soliciting for your brother? A. About two months.

Q. What were you doing before that? A. In business for myself.

Q. What business? A. In the coffee and tea business.

Q. How long? A. About eight years.

Q. In the same place? A. No; higher up the street.

Q. How long were you in that place? A. About three years.

Q. Where were you in business? A. Across the street.

Q. You have been a pretty active politician, haven't you? A. Oh, no.

Q. Except this last time? A. This last time I took an interest in politics.

Q. You didn't take a bit of interest in the world before? A. Not a bit in the world.

Q. How did you come to get in the polling place? A. I was going to try to go to the convention on the Republican ticket as a reform candidate—as reform party; and Mike Berry came to me—that was why I wanted to get—and he was fighting for the nomination, and he said Banks wanted to get the nomination, and he said Banks was the old party, and he was the reform party, and I told him I would run—I was a pretty strong man

down there, and I would run. I got my tickets out and Frank Hussey was in that precinct, and he said he was in favor of Barry and had withdrawn for him, and Hussey said, "I will go down and get your tickets, and we will go down and make a fight, and we will win the precinct." I said, "All right," and still I hadn't any suspicion of him, and I went up and told Barry, and Barry said, "I would not go a cent on him; I wouldn't trust him, on account of some things I heard before." He came down on primary day about twelve o'clock—

Q. All I want to know is how you came to get in the polling place? A. I am going to explain the whole business to you—just exactly how I got in. Mr. Hussey said, "You need not go down until about half-past twelve;" so I went down and found that Pete Rector was running, and he was away home, and Hussey was running Rector. And I said, "How is Pete Rector running?" And he said, "I cannot help you; it is the orders from headquarters." I said, "From where?" He said Mr. Smiley and Higgins and Banks, all had ordered. I said, "You promised to support Mike Barry always;" and he said, "Well, I cannot help it." I said, "Who is going to get this nomination?" He said, "Well, Banks will get it. I think." And I said, "You let Banks get it and I will get out and do all I can against him." I started in as soon as Banks got the nomination for Senator, and I got all my friends I could see and speak to, to vote against Banks on the day of election. So Schottler was running on the Republican ticket for the Assembly from the Thirty-third District, I believe, and I met him in the stable of Arata, I believe; and I told Hussey then we were going to get out and knife Banks. So he said, "Well, you don't want to go in and do that." I said, "I am going to do it, all the same." A couple of days after that, George Williams came up to me—and he is a personal friend of mine, and belongs to the Druids with me, and the Legion of the West, and other orders—and he said, "I have done favors for you and I want to have you do a favor for me." I said, "What is that?" He said, "Banks is a particular friend of mine, and I want you to do all you can for him." I said, "I have got out and done all I could to cut him." He said, "Well, get out and do work." And I said, "Look at the work he did against me down at the Republican primary." So he said Hussey did that, and he would bring Banks up and explain it. So next day he did bring Banks up, and I said I did not go much on Banks. So I let that go, and Mr. Smiley came up next day, and he explained the whole thing to me, and told me it was not Mr. Banks' fault, but it was Hussey's fault.

By MR. DORN: Mr. Smiley lives up in that precinct, does he? A. Yes, sir; Mr. Smiley lives up in that precinct. So he says, "Pistolisi, I have relied on you to go down there to the polls as Inspector and watch the polls, because they are going to defraud the Republican party out of votes down there." And I said, "I don't know whether I will do it or not, Mr. Smiley; I will let you know next day." So when Mr. Smiley came in the store—I don't know whether it was in the store or I went down to his office or not—so he said, "How is it going to stand?" So I said, "I guess I will get in and work for Banks and try and undo the work I did against him." So he said, "All right; you come down to my office to-morrow." So I did that, and he told me he would put me in the place as Additional Inspector, and he gave me instructions then, "You want to watch not only Maxwell and Ryan both, but watch them all—watch the whole business." So I said, "I will go down and get Banks and introduce him to my friends." And he said, "All right," and I went after Banks, and I

fixed a day, and I took him up and introduced him personally to all my friends and asked them to vote for him.

By MR. CLUNIE: Now you are through, are you? A. No, sir. Are you satisfied?

Q. If you are through, I want to ask you a question. At the Republican primary, you say you never mixed in politics? A. No, sir.

Q. You were not taking an active part? A. No, sir.

Q. That is not taking an active part? A. You said I was an active politician, and I said no.

Q. You wouldn't call that that you have been telling us here—this string for the last half hour—as taking an active part? A. No, sir.

Q. What do you think is taking an active part? A. I don't think a man is fit to take an active part in it unless he knows all about it, and I have only been in it a few days, and don't know anything about it.

Q. You expected to become experienced in two or three years? A. Well, in three years I thought I would be experienced. I thought I would know the ins and outs of the thing three years from that.

Q. And it is in pursuance of that ambition, isn't it, that you have been hanging around this Court-room for the last couple of weeks? A. I had nothing particular to do, and I thought I would come around and listen to these cases. I was told I would be a witness, and I didn't know what time I was going to be called.

Q. Didn't you know you wouldn't be called until my case was done? A. Well, how did I know when that was? You were going to end it one day and then you were going to end it another.

Q. You have been following me around two or three times, haven't you? A. No, sir.

Q. Weren't you in Judge Burke's Court when I was in there? A. Wasn't I in there before you got in there, too?

Q. You were in there two or three times, weren't you? A. I was in once when you were there.

Q. You were in there twice? A. Twice: yes, sir.

Q. Did you have any object in watching me? A. I think there is lots of other men I can watch besides you.

Q. Then you are always busy soliciting for your brother and find time not only to stay when this case was going on, but two or three days when this testimony was not going on you were in the other Court-rooms? A. Did I tell you I was busy soliciting?

Q. Yes. A. No, I didn't say anything of the kind. You asked me what I was doing and I said I was soliciting for my brother.

THE COURT: Just answer the question properly.

By MR. CLUNIE: How often did you solicit? A. I might not for a week, and then I might get out and rustle for all I was worth.

Q. When did you solicit last? A. About three weeks ago.

Q. Whom did you solicit from then? A. I went up and got a couple of families up on Filbert Street for my brother.

Q. Who were the families? A. Skivo.

Q. Where does Skivo live? A. On Filbert Street.

Q. Whereabouts on Filbert Street? A. Between Dupont and Kearny.

Q. Was there anybody else? A. There was a lady upstairs, and her daughter.

Q. What are their names? A. I don't know.

Q. Did they buy some coffee? A. Yes, sir.

Q. How much did the two families get? A. We get a customer and they buy a week from them.

Q. How much did they buy? A. Each one of them bought a pound of coffee. I just answered that question to accommodate you. That is all.

Q. Three weeks ago those people bought two pounds of coffee, did they? A. Yes, sir.

Q. What was your commission on that? A. I got a dollar apiece on them.

Q. Then in three weeks you made a dollar off from them? A. I made two dollars.

Q. You made two dollars in three weeks? A. No, sir.

Q. Did you get any others? A. That is none of your business.

THE COURT: You will be kind enough to remember you are in Court and answer the questions properly.

MR. CLUNIE: What other business are you engaged in? A. I won't tell you what other business I am in.

THE COURT: Answer the question. A. Well, in common language, surveyor of the public streets.

Q. A sort of a street-walker? A. Yes, sir.

Q. How much have you made as street-walker?

MR. DORN: I object to that question.

THE COURT: That is hardly a proper question. The witness did not say that he was a street-walker. That was not his language, and you were hardly justified in using the language to him. You need not answer that question.

THE WITNESS: I can answer that question. I have saved ten cents in car fare.

By MR. CLUNIE: I want it noted that I except to your honors' ruling. You have not ruled up to this time.

THE COURT: No; I won't say that he need not answer. He declines to answer, and you asked us to instruct him to answer.

MR. CLUNIE: I want it to appear on the record that your honors have instructed the witness he need not answer, and that was the ruling and we excepted.

THE COURT: We have not so ruled. It is not a proper question. The witness declines to answer the question and you ask us to instruct him and we have refused.

MR. CLUNIE: Then you don't decline to answer? A. No, sir; I told you I saved ten cents every day; I saved car fare.

Q. Then that was your object walking around the street? A. I didn't say that.

Q. How much did you make in the last three weeks as surveyor of public streets? A. Do you want me to tell you how much?

Q. That is it; yes, sir. A. I don't know. All I made was saving car fare. That is all.

Q. Then all that you have really made in the last three weeks is two dollars? A. Oh, no. I guess I have saved a good deal more in car fare.

Q. Then all the money you have earned in three weeks is two dollars; is that right? A. Yes, sir; while I was doing nothing.

Q. Prior to the three weeks, where had you taken orders? A. I was going around getting orders in different restaurants for my brother.

Q. Does your brother keep an account of all the moneys he gives you? A. I don't know whether he does or not.

Q. Did you give him receipts for it? A. No, sir.

Q. You have received no money from anybody else? A. Yes, sir; I guess I have.

Q. Who else? A. My father.

Q. How much have you received from him? A. In the last three months about \$400.

Q. As I understand it, from your statement here a little while ago, after the Republican primaries, you were opposed to Mr. Banks; is that right? A. Yes, sir.

Q. You went around telling people you intended to knife him? A. Yes, sir.

Q. And you did proceed to knife him? A. Yes, sir.

Q. And your friend Williams came to you and asked you to stop? A. Yes, sir.

Q. And you did not stop? A. Oh, yes, I stopped right there at the time.

Q. You stopped with Williams, did you? You stopped going against Banks for Williams, did you? A. Not exactly for that.

Q. Didn't you, in a long statement a few minutes ago, say that Williams came to you, and you told him you couldn't stop, and you wouldn't, and you said Mr. Smiley came to you afterward? A. I don't think I told him I couldn't stop.

Q. What did you say? A. I said I would see about it, George.

Q. What for? A. To find out whether it was Banks' fault that I was defeated down there.

Q. Did you investigate that? A. Oh, yes.

Q. How long after that did Mr. Smiley come and see you? A. The next day.

Q. Did you investigate it by the next day? A. Certainly; I can investigate it in two hours.

Q. Did you investigate it in two hours? A. Yes, sir.

Q. Then Mr. Smiley came to you the next day? A. Yes, sir; Mr. Smiley was the last man to see—excuse me; I believe I saw Mr. Smiley a couple of days afterward, or the day after.

Q. Did you see Mr. Banks in the meantime, after Mr. Williams had been to see you? A. Before I saw Mr. Smiley?

Q. Yes, sir. A. No, I don't think I did.

Q. Don't you know whether you did or not? Will you swear that you did not? A. I don't think I did.

Q. Didn't you swear in this statement a moment ago that you had, and then Williams came to you, and then Banks came? A. Did I swear Banks came with Williams?

Q. Yes; in this long statement. You have not forgotten that already, have you? A. No, I don't think I have. Yes, sir; Banks did come up to me next day. The day after I saw Banks I saw Mr. Smiley.

Q. Then you saw Mr. Banks the day after you saw Williams? A. Yes, sir.

Q. You and Banks had a talk then? A. We had a talk just how that primary took effect—just how it was done.

Q. Just tell us what Banks said? A. When Banks came up Williams introduced me and said, "Pistolisi, this is Mr. Banks," and I commenced to laugh. I was told he was small, you know, but I didn't think he was that small. I commenced to laugh, and George Williams says, "Now, Pistolisi, he has been explaining the whole business, just what was done; say whether it was his fault or not." I said, "Well, if Banks can explain to my satisfaction that he had nothing to do with the precinct down there, I will stop right here." I might not go any further. Then Williams says, "It ain't that. Pistolisi: now if he explains to your satisfaction, just promise me right here that you will get out and do work for him." I said, "George, I won't let you know right away." He said, "Why," and I said,

“There is another party concerned in it.” Then he said, “Who,” and I said, “Mr. Smiley.” So Mr. Banks told me and explained to my entire satisfaction that he had nothing to do with it. So I said, “I will see Mr. Smiley now and see if he can explain it to my entire satisfaction.” So next day Mr. Smiley came up to the store, I believe it was—or I don’t know whether I went to see him—and I asked Mr. Smiley about it, and he told me Mr. Banks had nothing to do with it, and I said, “Mr. Smiley, I will go down and tell Mr. Williams I will help Banks.”

Q. You told Mr. Smiley the day he came to see you that you would see Mr. Williams and tell him you would help Banks? A. Yes, sir.

Q. Then you were a little wrong in this long statement you made a little while ago, where you said Mr. Smiley came to you the next day, and you said you told him the next day, and the next day you would go down to his office? A. No, I don’t think I did.

Q. You don’t think you said that? A. No, I don’t think I did. I don’t think I told him. I am pretty positive I told Williams I wouldn’t give him an answer that day, but I would see him another day.

Q. But I asked you about the conversation between yourself and Mr. Smiley. You testified a moment ago that you and Mr. Smiley had a conversation, and one day another? A. Mr. Smiley didn’t ask me to take charge of the precinct the first day; no, sir.

Q. Didn’t you swear a moment ago he told you that? A. On the first day I met him? No, sir.

Q. If the record shows that you made that statement it is wrong then, is it? A. Yes, sir.

By MR. DORN: That is, it is wrong, if there is any such statement? A. Yes, sir; if there is any such statement, because I told him he did not the first day.

By MR. CLUNIE: What did Mr. Smiley say the first day he came to you? A. He explained to me how that precinct was conducted down there—how that it was not Banks’ doings, but it was Hussey’s own doings, and that he wanted the nomination.

Q. Did he ask you to get in and help Banks? A. He heard I was out knifing him, and he told me that it was wrong to do that.

Q. Then Mr. Smiley told you what? A. If you will let me get through, I will explain the whole business to you.

Q. Go ahead. A. He said: “It was wrong, Pistolisi. Now you can see there is a man that is innocent of the whole business. He had nothing to do with it. It was Frank Hussey’s fault, and here you have been out knifing that man.” I said, “Well, it is done;” and he said, “The only thing you can do is to get in and undo the whole business.” So I said I would go down and see Williams, and get in and undo the whole business.

Q. So there was nothing said about the Republican precincts at that time? A. No, sir; I don’t think there was.

Q. If you swore to that a few minutes ago, you are mistaken? A. I guess I was. I might have been mistaken.

Q. Did Mr. Smiley tell you to come down to his office? A. I don’t remember now whether he did or not.

Q. If you testified to that a few minutes ago, were you mistaken? A. No; I am confident if I testified to the fact it is the truth. If I testified to the fact it is the truth.

Q. How will you testify on it now? Did he tell you to come down to his office? A. He told me quite a number of times to come down to his office.

Q. In the conversation with him that day regarding Banks, did he tell you to come down to his office next day? A. Yes, sir; I think he did.

Q. Did he, or did he not? A. He either told me to come down to his office or he was coming up to see me.

Q. Which did he tell you? A. I guess he did tell me to come down to his office.

Q. That is right, then? A. Yes, sir; that is right.

Q. Then you were mistaken a little while ago when you said that was all that occurred? A. A man can't remember every bit of the conversation. You asked me what Mr. Smiley told me, and what Mr. Banks, and you didn't ask me about my own business and Mr. Smiley's business.

Q. Did you and Mr. Smiley have any private business? No; not to amount to a row of pins.

Q. What was the private business with you and Mr. Smiley? A. The most that could have been private must have been to come down to his office.

Q. He told you to come down there on private business? A. On private business, exactly.

Q. What did he tell you to come down to his office for? A. Probably he told me to come down to his office so as to put me in this precinct, or something.

Q. Didn't you know what you were going down to his office for? A. I think he told me to come down to his office after I told him I would go down and see George Williams and tell him what I did do—no, I think he told me to come down to his office after I saw him.

Q. What did he tell you to come down there for? A. How do I know what he wanted me for?

Q. Did he say anything about the precinct? A. I don't remember.

Q. Can't you remember that? You remember all the other conversation. Why can't you remember that? A. I don't know exactly whether he told me that or not.

Q. You swore a moment ago that he did tell you he wanted you in the Precinct Board. Did he tell you that, or not? A. If I testified to the fact, he must certainly have told me.

Q. I ask you now, and you must remember it now as well as before, did he tell you that? A. If I testified to that fact, it must be so.

Q. Did he, or did he not, tell you he wanted you to go on the Republican Precinct Board?

MR. DORN: You mean at that particular time, when he had the first conversation, whether he asked him to go in the Precinct Board, the first time he had the conversation?

MR. CLUNIE: No. Just ask the question the way I asked it.

[Here the reporter reads counsel's previous question as follows: "You swore a moment ago that he did tell you he wanted you in the Precinct Board. Did he tell you that or not?"]

MR. DORN: I ask you to explain to the witness at which time you refer to.

MR. CLUNIE: I ask the Court to instruct the witness to answer that question.

MR. DORN: I ask that the witness' attention be directed to which of the conversations.

THE COURT: The question is susceptible of an answer in that form.

[Here the reporter again reads the question.]

A. Certainly he told me that.

By MR. CLUNIE: You are sure of that? A. Positive of it.

Q. You swore a few moments ago, didn't you, that he did not tell you anything about it the time of this first conversation? Which is correct?

A. This last statement I testified to is perfectly correct.

Q. The statement you made a few minutes ago about the first conversation is wrong? A. You didn't ask me about the first conversation.

Q. Will you swear you didn't say a few minutes ago he didn't say anything about the Precinct Board? A. You asked me the question—

Q. [Interrupting.] Did you say a few minutes ago that nothing was said between you and Mr. Smiley about the Precinct Board? A. No; I don't think I did.

MR. DORN: That is what he swears now; he swears it was the last conversation.

MR. CLUNIE: No, he don't.

Q. Just answer the question; you don't think he swore to that? A. No.

Q. If you did swear to it, you are mistaken, are you? A. To my saying that he didn't ask me about it?

Q. Yes. He did ask you about it, didn't he? A. He must have asked me about it.

Q. If you swore he didn't ask you about it, then you are mistaken, are you not? A. I don't know whether I would be mistaken or not.

Q. Don't you know whether you were mistaken or not if he did say it? If he did say it, and you swore that he did not, you must necessarily have been mistaken, must you not? A. In the conversation I had with Mr. Smiley about Mr. Banks at that time, he didn't say nothing about the Precinct Board.

Q. He didn't say it? A. No, sir.

Q. Now, you say he did not? A. No, sir; that is in the first conversation, right there.

Q. A minute ago, in response to the question read to you by the reporter, you answered that Mr. Smiley then spoke to you about going into the the Republican Precinct Board? A. The question you asked me then was, you said, "Didn't Mr. Smiley speak to you about going in the Election Board?" and you didn't ask me what day or anything else.

Q. You are positive, now, that nothing was said in the first conversation about the Precinct Board? A. Not what I call the first conversation.

Q. What was the first conversation? A. At the time I explained about Mr. Banks and everything else. He went outside, and I think it was ten or fifteen minutes, and he came back again.

Q. Then, it was the Precinct Board? A. Yes, sir, then.

Q. It was during the same day, wasn't it? A. Yes, sir; it was during the same day.

Q. And at the same place? A. No; I think it was not in the same place; I think it was outside the store.

Q. But outside the store? A. Well, all around the store.

Q. Don't you know that, as a matter of fact, that was what caused you to let Banks alone: the promise of Mr. Smiley to put you in the Precinct Board? A. No, sir; it was nothing of the kind.

Q. Wasn't it that? A. No, sir; I am not positive of that.

Q. Before that, you had been out hollering for Sullivan? A. No, sir; I was not hollering. I just told my friends not to vote for Banks.

Q. Hadn't you been a Democrat before that? A. No, sir.

Q. You never had anything to do with Democrats before that? A. I never had anything to do with politics.

Q. Did Mr. Banks promise you anything? A. No, sir; Mr. Banks never made a promise to me.

Q. Did he agree to do anything for any member of your family? A. No, sir; he did not.

Q. You are positive of that? A. I am positive of that.

Q. Not at all. A. Not at any time.

Q. Did he promise to do anything else for you? A. No, sir.

Q. Did you go up to the Governor with Mr. Banks? A. No, sir.

Q. Are you sure of that? A. I am positive.

Q. Did you ever suggest to Mr. Banks that you had a favor you wanted from the Governor? A. No, sir.

Q. And that you are positive of? A. I am positive.

Q. You never suggested it to anybody? A. No, sir.

Q. You say Mr. Maxwell was there with this Ryan that you referred to? That is the gentleman sitting there [indicating]? A. That is the gentleman, yes.

Q. And you swear positively that Maxwell was there with that man Ryan when he voted? A. I didn't swear positive, did I?

Q. I understood you to. You swore the statement he made there was wrong? Do you swear positively, under oath, that Maxwell and that man over there were there? A. I am. I swear positively that Ryan was there, and I am sure of it.

Q. You are sure of it? A. Yes, sir; I am sure of it.

Q. Are you sure Maxwell was there? A. I am not sure; but, in my opinion, I think I glanced at his face when he was standing there.

Q. You were acting as Clerk at the time? A. Yes.

Q. Who were the Clerks? A. The only clerk I know was a Republican, and that was Corbett.

Q. What time of day was that? A. I don't remember what time of day it was. I had been off and on, and sometimes I would stay half an hour, and then Harman would come back, and he would stay half an hour, and I would come off.

Q. In the afternoon or the morning? A. I don't know. I am inclined to think it was afternoon.

Q. The only reason that caused you to think it was Barry was that he had on no baker's clothes? A. I saw Ryan and that was what aroused my suspicion first, and it seemed to me as if he was a bricklayer, the kind of clothes he had on, and I was a baker myself one time, and I knew very well I couldn't come right out of the shop without having some flour on me.

Q. Who employed you to work as Inspector there, Mr. Smiley? A. Mr. Smiley; yes, sir.

Q. Was he the County Committeeman? A. He was the County Committeeman; yes, sir.

Q. Was he attending to all that business there? A. I don't know what Mr. Smiley's business was.

Q. What agreement did he make with you with regard to pay? A. He didn't make any agreement.

Q. How much did you get? A. I got six dollars, and I sold my warrant and got five dollars.

Q. Did you work longer than three days? A. I worked longer, but that was all the law allowed.

Q. And you received no money from any candidate? A. No, sir.

Q. And you received no money from Banks? A. No, sir.

Q. And you received no money from any one on his behalf? A. No, sir.

Q. And no money was paid? A. I stayed there on behalf of the Republican County Committee. No, sir.

Q. There was a promise to give you a place? A. No, sir.

Q. Banks never made any promise of that kind to you? A. No, sir.

Q. Did anybody on his behalf? A. No, sir.

Q. He didn't take you up to the man that had the power to fill the places? A. He took me up to the man, but he didn't make me any promise.

Q. What did he take you up for? A. He took me to Mr. Higgins and he said, "Now, if you want to watch at the precinct, Mr. Higgins will tell you how to work."

Q. Then the County Committee didn't give you these instructions? A. No, sir.

By MR. DORN: Where was that? A. Down at the State Central Committee rooms. Mr. Banks took me down and introduced me to Mr. Higgins, saying, "This is one of the men that was out knifing me before, and now he is going to try to help me out, and the reason he came down is that he wants to get a few instructions;" and I said, "I am a green hand at this business, and I don't know how to do this business, and the best way I know is to take Banks around from house to house and introduce him to each one of my friends."

Q. Banks told you he didn't know how? A. I didn't know Banks before, or know what he was.

Q. You didn't take your instructions from Mr. Smiley, then? A. I certainly told you Mr. Smiley told me to look out particularly for Maxwell and Ryan.

Q. These were the only instructions you got from Mr. Smiley? A. Those were the only instructions I got from Mr. Smiley.

Q. All the rest of your instructions you got from Mr. Higgins? A. Yes, sir.

Q. And Mr. Higgins was the man in charge of the whole business? A. I don't know. I heard of Mr. Higgins for years and that he was pretty smart, and I thought I would go down and get information from him.

Q. And Mr. Higgins was the one that instructed you what to do? A. He told me what to do, some, yes. Then I could go round and see what votes I could get for the whole ticket from top to bottom.

Q. Banks didn't tell you how to get votes? A. No, sir.

Q. But he told you Higgins would tell you how to get them? A. No, sir; he didn't tell me anything about Higgins at all. I told Banks I wanted to go up and see Mr. Higgins.

Q. What passed between you and Mr. Higgins? A. He just told me how to go from house to house and make an honest fight, and that I was not like the balance of them to go round and make a saloon fight, and he said, "The best thing you can do is to go out and get the register—one of the old ones will do, and go from house to house, and if Banks is with you introduce him from house to house, and if Banks ain't with you, speak to them about him and praise Banks up a bit." So I said I could do that; I was pretty well acquainted in the precinct. And I took Banks up to the store in the precinct, and I introduced him to some of my Italian friends, and I said, "Now, I will go down in some of the alleys where they speak Italian, and they wouldn't like to be interrupted, so I will go down there." And I took Banks' cards down there and I spoke to these Italians, and I went then, when I got through there, to my precinct, and I went to most of the houses there, and especially round where I live, and Maxwell was around several, and especially Ward, making a fight for Sullivan, and

they were seeing the old Republicans especially, and I got in and got them to promise to vote for Banks. That was all, and that was the reason I wanted to see Mr. Higgins.

Q. So you didn't think Banks was competent to give you instructions? A. I didn't know; I didn't know Banks at the time. I heard he was a candidate, and that was all.

Q. And you didn't say anything to Mr. Higgins about there going to be some vacancies to fill? A. No, sir.

Q. And that was not stated by Banks or Higgins to you? A. No, sir.

Q. And it was not mentioned that you were to be taken care of in case of victory? A. I might have stated that to get around those Italians. You have got to state anything to them to get a vote. All I told them was, I said, "Here, my friends, you want to vote for this man here, and you will do me a personal favor, and it will yield to my interest; now, you vote for him."

Q. You didn't tell them you were going to get a place? A. I don't know whether I did tell them I was going to get a place or not. If I did, I lied.

Q. Will you swear you didn't tell numerous Italians up in the Twenty-first District that you had the promise of a place to work if Banks was elected, and you wanted them to get in and help you work? A. No, sir; I never told them I had promises.

Q. You did not? A. No, sir.

Q. Did you tell them you were to be put to work? A. I might have told them I was, in order to get the votes.

Q. You had no foundation for that? A. No, sir; I had no foundation for it.

Q. You went around falsifying to these people to get votes for Banks? A. You have got to tell them most anything in politics.

Q. And you did do that? A. Well, perhaps I did. I didn't say I did or I did not.

Q. You went around doing it for Banks? A. Not Banks, exactly.

Q. Did you tell them to vote for the whole Republican ticket? A. Not specially.

Q. Why did you select Banks? A. Because Williams asked me to do it, and because I had got out and started in to knife Banks, and went to all these friends before and told them to vote against him. When I see the man was innocent of all wrong I accused him of doing, of course, it was natural for me to get out and do all I could.

Q. You had no promises? A. No, sir.

Q. Williams never made you any? A. No, sir.

Q. He never told you that he would take care of that contract you had made? A. No, sir.

Q. He never at any time told you that? A. No, sir.

Q. Do you know Guinassa, that lives up in Bannon Place? A. No, I don't know the name; I don't know the name. I might know the man.

Q. He lives at No. 11 Bannon Place? A. I don't know that place. I might know the street but I don't know the name of the street.

Q. You called off some ballots in that precinct when they were counting, didn't you? A. Yes, sir.

Q. You didn't make any mistake, did you? A. I made one mistake.

Q. What was that? A. I think it was McIntyre's name I skipped. I was pretty sleepy and I happened to skip it.

Q. You didn't skip Russell, did you? A. No, sir; I don't think I did.

Q. It was just accident that you happened to skip McIntyre? A. Yes, sir.

Q. Did Mr. Kelly, who was running for Sheriff, have an accident up there? A. That might have been the name; I told you I was not there. I told you there was only one name I skipped.

Q. Didn't you skip it a couple of times? A. No, sir; I did not.

Q. Didn't you skip Mr. Kelly's name twice? A. On the same ballot?

Q. Yes, sir. A. No, sir.

Q. Wasn't your attention called to it? A. Attention was called? They were trying and getting me to read that wrong. We had no Board to call off our ballots; we had no Board, rules, or anything else, and all we had to do was to take the ballots in our hands.

Q. Then the count up there is liable to be very inaccurate? A. No, sir; not as far as I am concerned.

Q. How do you know, if you had no Board? A. Because my attention would have been called to it if I had skipped any names.

Q. Then you were pretty correct in your count? A. Certainly I was pretty correct. I only made one mistake that I know of, and my attention was called to that.

Q. And your attention was called to that? A. Yes, sir.

Q. You remember only one name? A. Yes, sir.

Q. And you are sure he was a Democrat? A. Yes, sir.

Redirect Interrogatories.

By MR. DORN: Was your attention called to that? A. Yes, sir; just one name.

Q. Somebody read out that name and you looked and it was rectified? A. Yes, sir.

Q. Did you do that intentionally or accidentally? A. No, sir; it was accidentally.

Q. And there was no other name skipped? A. No, sir.

Q. You didn't intend to skip that name? A. No, sir.

Q. You had no desire to defraud him out of any vote? A. No, sir.

Q. And you called the votes out honestly? A. Yes, sir. There was another thing I noticed. In fact, as I read the law all through pretty near, the ballot was marked "O. K." on the bottom, and I paid no attention to it at the time, and the law said, if you can identify the caster of the ballot—and I didn't know him—and I started in and read it out and got a few of the electors out, and they said, "You can't read that ballot," and I said, "I can," and Maxwell went to make a snatch for the ballot and took it off and I got it again.

Q. Maxwell was not an officer at all? A. He was in the other precinct.

Q. And he had no right to touch that ballot then? A. No, sir.

Q. He was a United States Marshal? A. Yes, sir.

Q. Did he have a United States Marshal's badge on? A. Yes, sir.

Q. He and most of the firemen in that district had United States Marshal's badges on, didn't they? A. A good many of them did.

Q. As a matter of fact, wasn't it the habit of most all of the firemen in that district to have United States Marshal's badges on? A. I don't know that.

Q. There was a good many of them? A. Yes, sir; there was a good many firemen there.

Q. About how many people were there in the room at the time? A. One time there was when the room was packed, and one gentleman said he would throw them out?

Q. And they were creating a disturbance? A. Yes, sir.

Q. And it was difficult to go on with the business? A. Yes, sir. One time Mr. Corbett and myself were about the only Republicans in there, and I don't know what they were trying to do with the ballot box, and I sent off word for Williams, and he didn't come up, and I sent out again, and so Williams and Captain Smith came up, and as soon as they came up and all the Republicans, why all the Democrats went right out.

Q. The second morning after election about how many of these gentlemen connected with the Fire Department congregated in that precinct there? Did you see Pete Fleming there? A. Oh, yes; he came up there.

Q. Did you see George Maxwell there? A. George Maxwell? I don't know whether he came up the second morning or not.

Q. Did you see Denny Sullivan, District Engineer? A. I don't know their names, but there were quite a number of firemen up there that I know by sight, but I don't know their names.

Q. Didn't Mr. Sullivan and Denny Sullivan drive up in a buggy, and didn't they see a disturbance going on, and get out? A. There was somebody came up, and somebody stood——

Q. You saw John J. Sullivan, the contestant in this case, there, didn't you? A. Oh, yes, sir.

Q. And William Maxwell? A. Yes, sir.

Q. And that was the crowd that was raising the disturbance? A. They did not create a disturbance, because I kept my temper down, but they tried to. Once in a while they would nudge me, and say I was calling the ballot wrong, and there was one young man that I saw round here, and he was in the place quite a while, and it was pretty difficult to get him out of the place.

Q. Wasn't Mr. Callaghan, the one who has been round here, the one? A. I don't know the gentleman's name. He is a stout young fellow.

Q. Heavy set? A. Yes. He is around here every day.

Q. You live at home with your father and mother, do you not? A. No, sir; I am living with my wife, up at 1126½ Filbert street.

Q. You have a father living over in that same district, have you not? A. On Hyde and Vallejo, yes.

Q. And you have a brother in business over there? A. Yes, sir.

Q. For him you worked? A. Yes, sir; I worked for him, going around soliciting whenever I want to make anything.

Q. You say one of the reasons why you were active trying to help out Banks, as well as the Republican ticket, was because you felt you had done him an injustice? A. Yes, sir; as I felt.

Q. How did you discover you had done him this injustice? A. It was through Mr. Schottler.

Q. You started in to knife Banks, or to do all you could against him? A. Yes, sir.

Q. Because you thought he had assisted in defeating you at the primary election? A. Yes, sir.

Q. You were a candidate for the Republican Convention? A. Yes, sir.

Q. And you were not successful? A. No, sir.

Q. And you believed Mr. Banks and Mr. Smiley had defeated you, and for that reason when Mr. Banks did receive the nomination, you started out to get even on him, in other words? A. Yes, sir.

Q. Then Mr. Williams said to you that you were doing wrong; is that it? A. Mr. Arata and I were out knifing Banks; we were at the Union Restaurant—

Q. [Interrupting.] Well, you were told that you were mistaken? A. Yes, sir.

Q. And that Banks had done nothing against you? A. Yes, sir.

Q. Afterwards Mr. Banks came to see you, as I understand, and explained the fact to you, and assured you that he had not had anything to do with that precinct? A. Yes, sir.

Q. As a matter of fact, you afterwards discovered, and now know, that Banks had nothing to do with that precinct, one way or the other? A. Yes, sir.

Q. And did not interfere with you or with any other man? A. No, sir.

Q. And Mr. Banks explained to your satisfaction, and you had a suspicion Mr. Smiley might have defeated you? A. Yes, sir.

Q. And you would not make any promise at all? A. I wouldn't make any binding promise to Mr. Smiley until it was explained to my satisfaction.

Q. Afterwards Mr. Smiley came to see you? A. Yes, sir.

Q. Mr. Smiley lives up there, don't he? A. I think he lives up on Chestnut. He lives in my precinct, anyhow.

Q. He was the Republican County Committeeman at that time? A. Yes, sir.

Q. He then came to you and explained, and then you were satisfied you had done wrong by Mr. Banks? A. Yes, sir.

Q. And that was why you were anxious to undo the wrong and straighten the business out, as if you had done nothing against him? A. That is it.

Q. You are not hunting anything, are you? A. No, sir.

Q. You don't want any office? A. No, sir.

Q. You have no desire for office, and you have no candidate for office? A. No, sir.

Q. You simply took part in the election because you were not doing anything else? A. That is all.

Q. You were asked if the inducement that changed you from opposing Banks to favoring him was the appointment as an Inspector of Election. At the time you got that appointment you knew that the salary was only two dollars a day, didn't you? A. Certainly; that didn't change it at all.

Q. And you knew in all human probability you wouldn't get more than six dollars for your services? A. Certainly; I knew all that.

Q. You did not consider that as an inducement to change your position and support Banks? A. No, sir. I guess I just sold my business out, and I was not hard up.

Q. And Mr. Smiley saying he wanted you on the Precinct Board didn't have any influence on you, one way or the other, working for Banks? A. No, sir.

Q. The reason you worked for Banks was because you discovered you had done him a wrong? A. Yes, sir.

Q. You are a Republican, are you not? A. Yes, sir.

Q. And have been all your life? A. Yes, sir.

Q. Ever since you voted? A. Yes, sir. Only when Mr. Smiley got my name—Rector took it in, I think—somehow he got it; out there at the Register Board he took my name.

Q. You say that in making your mind up there you discovered other people making their rounds for Sullivan? A. Yes, sir.

Q. Were they going from house to house? A. No, I don't think they were, exactly.

Q. What were they doing? A. Asking some in the barroom to fight for Sullivan.

Q. Only walking around the barrooms asking people to vote for Sullivan? Hanging around? A. No, not hanging around; but they would be there and come up and ask people.

Q. You were not hanging around there; but you happened to be there? A. I know they happened to be there whenever I came in.

Q. You said you had a conversation with Mr. Higgins? A. Yes, sir.

Q. How did you happen to have that conversation? A. I saw Mr. Banks and told him I wanted him to take me up and introduce me to Mr. Higgins. He said, "what for?" I said, "well, I want a few explanations: I am a green hand in this business; I want to find out something about that."

Q. You had been up to the State Central Committee's rooms, had you not? A. Oh, yes; once in a while I had.

Q. And you had seen Mr. Higgins there in company with other Republicans? A. I had seen him up there, yes, sir.

Q. And you wanted to get some information as to how you should proceed? A. Yes, sir.

Q. And you considered Mr. Higgins was posted in such matters and would tell you the best way to canvass that district? A. Yes, sir.

Q. It was at your request then, that you were introduced to him? A. Yes, sir.

Q. And had this conversation? A. Yes, sir.

Q. Did you tell Mr. Higgins you wanted any office? A. No, sir.

Q. Did you tell Mr. Higgins you wanted any appointment? A. No, sir.

Q. Or that you wanted any for anybody? A. No, sir.

Q. Did you tell him you would go and do this work because you wanted it? A. No, sir.

Q. You thought the best way was to proceed and do what you could to undo what you had done against Mr. Banks? A. Yes, sir.

Q. And he gave you this advice? A. Yes, sir.

Q. I understood you told him that you did not desire to make a bar-room fight? A. Yes, sir.

Q. And you didn't want to do it? A. No, sir.

Q. You wanted to know what was the most gentlemanly way to do it? A. Yes, sir.

Q. And he told you to go and introduce Mr. Banks where you could, and if he was not with you to leave his card? A. Yes, sir.

Q. Did you ever talk with any voter, or promise them anything for voting for Mr. Banks and the Republican ticket? A. No, sir.

Q. Did you ever tell them it would be to your advantage in any way? A. No, sir.

Q. Did you ever pay any money for voting the Republican ticket? A. No, sir.

Q. Did you have any money to do anything of that kind? A. No, sir.

Q. The only thing you did was to speak to your friends? A. Yes, sir.

Q. And that was to vote the Republican ticket? A. Yes, sir.

Q. And especially to vote for Banks, because you thought you had wronged him? A. Yes, sir.

Recross Interrogatories.

By MR. CLUNIE: You say this six dollars you did not care about. You were not hard up? A. I was not, sir; no.

Q. Yet you got this warrant and cashed it for five dollars. A. Yes, sir.

Q. You were not hard up? A. No, I was not hard up.

Q. Were you there on the day of election when the polls closed? A. Yes, sir.

Q. How long did you wait before you got counting the ballots? A. Probably about five minutes.

Q. Did you at any time take a recess during the count of the ballots? A. At the time I was counting the ballots, the most recess we had was about five minutes.

Q. Did you ever hear that any recess was taken there in the Board? A. Yes, sir; I heard the Democratic Inspector there had a recess for about three hours in the morning.

Q. He is the one that took the recess? A. Yes, sir.

Q. I want to know if the Board took it? A. All I know is that the Democratic Inspector declared a recess and it was three hours before they went ahead.

Q. Then you do know that as a matter of fact? A. No, sir; not as a matter of fact.

Q. It was a rumor, then? A. Yes, sir.

Q. Who was the Democratic Inspector? A. Mr. Harman.

Q. And that occurred under him? A. Yes, sir.

Q. You said a while ago there was Democrats in there creating trouble? A. I said they were trying to create trouble.

Q. How do you mean trying to? A. Jumping around, talking here and talking loud, so they couldn't hear in calling out names.

Q. Do you say you called in a policeman? A. No, sir; I did not. I said, "Boys, I don't want so much noise; I can't hear the names," and the policeman said, "If you want them thrown out, Mr. Inspector, I will throw them out."

Q. Give us the policeman's name? A. I don't know his name.

Q. Don't you know, as a matter of fact, that the law says you cannot do that, and they must be counted in the presence of the public? A. No, sir; the book didn't say that. These people disturbed the caller.

Q. What book did you read that in? A. There was a little book there.

Q. Did you act on that? A. No, sir.

Q. And you didn't throw anybody out? A. No, sir.

Q. And you can't tell me the policeman's name? A. No; I can bring him out.

Q. I wish you would. A. All right. One time he was going to throw somebody out, and I said, "Hold on: let him stay in here." I was not calling at the time, but Mr. Harman was calling at the time.

Q. Who said, "Let the boy alone?" A. He wanted to throw the boy out, and I think it was a Republican boy he wanted to throw out, and I said, "He is all right; leave him alone."

Q. Then you are the one that said that? A. Well, I think a whole lot of other fellows said that.

Q. When you said, "Leave him alone," he did it, didn't he? A. He didn't on mine particularly. Everybody said, "He don't want you to call off," when I was calling off, but they told me Harman was Inspector. When Mr. Harman was in, he went by Mr. Harman's orders.

Q. How do you know he did? A. I am pretty sure he did.

Q. You don't know whether Mr. Harman wanted anybody thrown out?
A. I don't know whether he did or not.

Q. You saw Mr. Banks there during the count, didn't you? You said you saw Mr. Sullivan there. Mr. Banks was there during the count, was he not? A. I don't know whether he came in the room.

Q. Wasn't he there? A. I know Mr. Banks was there.

Q. Wasn't he in the room? A. I don't know; I guess he was.

Q. Don't you know he was? A. I don't know. He was a candidate; I guess he ought to have been there.

[Here a recess was taken until two o'clock p. m.]

AFTERNOON SESSION.

LOUIS PISTOLESI.

Recalled for further Cross Interrogatories.

By MR. CLUNIE: You swore this morning that you never met Governor Waterman, didn't you? Answer. Yes, sir.

Q. You didn't go around with him through the Italian quarter? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. Just as sure as you are of anything else you have testified to? A. Yes, sir.

Redirect Interrogatories.

By MR. DORN: Do you know a man named Mike Barry? A. I do.

Q. What are his politics? A. I don't know exactly. At one time he is a Democrat, then a Republican, then a Democrat again, and I don't know exactly what he is.

Q. At the last election, he was a Democrat, was he not? A. I don't know exactly. I know for one party he was intensely Democratic.

Q. What was that? A. The Senatorial fight.

Q. What did you see him do in the Senatorial fight? A. A couple of days before election he told me he was going to try and help Banks out, and the night before election I happened to be sitting up in the grocery store there, playing euchre with the boys, and Barry he walked in and he said, "Pistolesi, how is your fight?" And I said, "My work is finished," and he said, "Well, come on boys, let's go up and have a drink on Sullivan," so he threw a dollar on the table and we had a drink.

Q. On the day of election, do you know whether Barry was working for Sullivan or not? A. I don't know; I know he was that night, because he come in the bar.

LOUIS A. CAMPBELL.

A witness on behalf of respondent, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Q. How long have you lived in this city, Mr. Campbell?

A. Thirty-three years.

Q. Where were you at the last election? A. I was stationed on the west side of Mason Street, north of Pacific.

Q. In what capacity? A. I had charge of a table from which the Republican ballots were distributed.

Q. What was your business there? A. Simply to deliver to people that solicited ballots to them.

Q. To deliver Republican tickets? A. Yes, sir.

Q. Had you any reason or any instructions to deliver anything but the straight Republican ticket? A. None whatever.

Q. You were employed there as what we call ticket peddler? A. Yes, sir.

Q. And it was your business to supply persons who desired them with Republican tickets? A. Yes, sir.

Q. Do you know a gentleman named Doran, a Deputy Sheriff? A. Perfectly well acquainted with him.

Q. He lives up in that precinct, and he is a pretty active politician? A. So recognized.

Q. He is a deputy in the Sheriff's office, is he? A. As I understand.

Q. You know him well, do you? A. For many years.

Q. If you saw him on the street or at any place, you would not be at all likely to be mistaken in his identity? A. I couldn't possibly be mistaken.

Q. You would recognize him and could not be mistaken? A. I could not.

Q. Did you see Mr. Doran on election day? A. I did.

Q. Where? A. About five or ten feet from where I was stationed.

Q. What was he doing there? A. He was speaking to three or four parties.

Q. What was he speaking to them about? A. I couldn't overhear the conversation.

Q. What did he do? Just give us in detail what he did exactly as it happened. A. I was sitting there quietly, and I saw a tall young man whom I don't know by name, with a white hat on.

Q. Would you know him if you saw him? A. I would.

Q. Look around the Court-room and see if you can find him. A. No. I have endeavored to find him, but he is not here. He come up with what we recognize in the vicinity as rounders. He told them to wait. He left their place and came back with Mr. Doran. Mr. Doran had a very brief conversation with him.

Q. The impression was that Mr. Doran was what he had gone for? A. Yes, sir.

Q. And he came back and they were conversing together? A. It appeared to me so.

Q. He brought Doran to these people? A. He did.

Q. At the place where he told them to wait? A. Yes, sir.

Q. Go on. A. I saw Mr. Doran place his hand in his pocket; I couldn't see which pocket, because his back was turned to me, and perhaps there were one or two behind him, and he handed, to my best knowledge and belief, money, because I heard the clink of it.

Q. You say Mr. Doran put his hand in his pocket, and you saw him take his hand out, and reach it in the direction of these rounders, as you call them? A. Yes, sir.

Q. And you heard the sound of money—coin? A. Yes, sir.

Q. Did he hand something to one or to all of them? A. I wouldn't undertake to say whether two or three.

Q. Did he hand something to more than one when he took his hand out of his pocket? A. He did.

Q. What did they do then? A. Two of them went with this same party that had brought them around where I was, and they went in the direction of the polls. They had ballots in their hands.

Q. Who furnished the ballots to them? A. I cannot undertake to say that. I don't know whether Mr. Doran or the other party.

Q. At the time this musical click of the coin was heard, and after Mr. Doran had taken his hand out of his pocket, you say he or the other party furnished them with a ticket? A. Yes, sir.

Q. And they were taken to the polls? A. They were taken to the polls.

Q. That happened in this city and county? A. Yes, sir.

Q. On election day? A. Yes, sir.

Q. In what precinct? A. In the Sixth Precinct of the Thirty-third District.

Q. What sort of men were these? A. They have the reputation in the neighborhood of being these regular beer-rounders; they never work to my knowledge.

Q. They were not a very high-toned class then? A. No; they were intoxicated at the time.

Q. They were brought there, and this interview took place, and they were marched to the polls? A. Yes, sir.

Q. What did you do when you saw that? A. According to instructions, I informed my brother what I had seen.

Q. You thought that was circumstant enough to go and tell your brother? A. I thought so.

Q. You went then and informed your brother? A. Yes, sir.

Q. Who is your brother? A. Alexander Campbell, Jr.

Q. The gentleman who testified on the stand this morning? A. So I am informed.

Q. This is the gentleman, is it [indicating Alexander Campbell, Jr.]? A. That is the gentleman.

Q. Do you know what your brother did then—what action, if any, he took in the matter. A. He told me to go back where I belonged, and remain there, that is all.

Cross Interrogatories.

By MR. CLUNIE: You say these men that came up were rounders. How do you know that they were rounders? A. They have that reputation in the vicinity.

Q. Who did you ever hear call them rounders? A. I couldn't designate any particular person, but that is the general expression that is used.

Q. Tell me one that ever called them that? A. Mr. Bullwinkle, that keeps the grocery store on the corner of Pacific and Powell.

Q. He told you those men were rounders? A. It is a subject of conversation every day in that grocery store.

Q. That they are rounders? A. Yes, sir.

Q. Those four men that came up to vote on that day? A. Yes, sir.

Q. What do you mean by rounders? A. I mean the men that live without any visible means of support, and that drink.

Q. What is your business? A. Clerk.

Q. For whom? A. For Mr. Campbell.

Q. For how long? A. For fifteen or sixteen years.

Q. Isn't it a fact that you are a runner around the Police Court? A. No, sir.

Q. Don't you go there? A. My brother practices there, and I belong to his office and have for many years.

Q. You don't stay around the Police Court as a runner for your brother? A. I stay there and attend to his business in his absence.

Q. Don't you stay around there as a runner for your brother? A. No, sir.

Q. And not for anybody else? A. No, sir.

Q. And you have no connection with anybody else? A. No, sir.

Q. Ain't you one of these fellows that hang around, getting bail for people? A. No, sir.

Q. You don't go in the jail and see these people? A. No, sir; never without instructions from my brother.

Q. Did you ever go into the jail and talk to people? A. I do, under my brother's instructions.

Q. With those people? A. With his clients, only.

Q. Don't you talk to people before they become his clients? A. No, sir; if that is my reputation, it is a wrong one.

Q. Don't you know that that is your reputation—as runner around the Police Court? A. I don't know it is such.

Q. You swear that? A. I swear, positively.

Q. You say you were a Republican there, representing Republican interests on election day? A. That is what I said.

Q. And you were representing that party when Mr. Doran bought these votes? A. I was.

Q. You had these Republican tickets? A. Yes, sir.

Q. Mr. Doran wanted to buy Republican votes; he bought them right there in front of you? A. I don't know what his intention was.

Q. Doran wanted to buy these votes, and knowing you to be a Republican in charge, he brought those men around in front and bought them, did he? A. I told you just what occurred, and you can draw your own inferences.

Q. That is what you would make people believe from your testimony, wouldn't you? A. I would lead them to infer that; yes, sir.

Q. And he brought them around in front of you, and let you see him buy them? A. I think the facts bear me out that way.

Q. If you were buying votes, would you do that way? A. I ain't in the practice, sir.

Q. How long since you have been out of the practice? A. I have not been in it.

Q. You never run around, working people for election? A. Never.

Q. And you never asked a man to vote, and tell him you knew where he could get money? A. No, sir.

Q. Do you know a man named Jackson? A. I know quite a number of people of that name.

Q. Do you know Fred Jackson? A. Yes, I know Fred Jackson that lives up on Stockton Street, near Greenwich.

Q. That is in the Twenty-first Senatorial District, isn't it? A. I don't know.

Q. You don't know what the Twenty-first Senatorial District is? A. No, sir.

Q. And you don't know what places are in it? A. No, sir.

Q. Did you have any talk with Mr. Jackson about the situation before or after the election? A. Never in my lifetime.

Q. Since this contest, have you taked with Jackson? A. Never in my lifetime.

Q. About this contest. A. No, sir.

Q. Have you talked with him at all? A. Oh, he is a friend of mine, but I have not talked with him for the last six or eight or nine months.

Q. You are just as positive you did not talk with Jackson as you are that you saw Doran buying votes? A. Yes, sir.

Q. You never take a drink, do you? A. I indulge in the flowing bowl occasionally.

Q. You drink to the extent that the rounders do, don't you? A. No, I don't drink the stuff they do.

Q. Isn't it the fact that you are most always intoxicated? A. No, sir.

Q. Ain't you more often drunk than sober? A. No, sir.

Q. You ain't? A. No, sir.

Q. How did you happen to come out here? A. At the solicitation of my brother.

Q. You were not subpoenaed? A. No, sir.

Q. Your brother has taken quite an interest in this? A. He has taken quite an interest in Mr. Banks' fight.

Q. In this contest? A. Not so much so as having Banks elected formerly.

Q. How did he come to ask you to come out here? A. He simply asked me.

Q. Where is his office? A. No. 636 Clay Street.

Q. That is up in Merchant's Block? A. Court Block.

Q. That is where you were? A. That is where I belong, and I was there in his absence.

Q. And he came in and told you he wanted you to come out? A. Yes, sir.

Q. And he didn't want to know what you would tell? A. He knew what I saw.

Q. Did he tell you that he wanted you to tell what you saw? A. No. I have a judgment and will of my own.

Q. Tell us the conversation that occurred between you and your brother. A. He simply told me: "I may want you to go out to the Hall and testify in the Banks contest this afternoon."

Q. Did he mention Mr. Dorn's name? A. Mr. Banks? He did.

Q. He didn't talk with you about it, so you wouldn't clash at all? A. No, sir.

Q. You wouldn't think of talking over such a thing as that? A. No, sir.

Q. Have you ever been arrested in this city and county? A. Yes, sir.

Q. What for? A. Some two years ago.

Q. What for? A. Petit larceny.

Q. Have you ever been arrested since then? A. No, sir.

Q. Have you ever been arrested for common drunk? A. Never in my lifetime.

Q. Have you ever been locked up in jail as a drunk? A. No, sir.

Q. But you were arrested for petit larceny? A. Yes, sir; and the case was dismissed in the Police Court, by motion of the Prosecuting Attorney.

Q. Who was the complaining witness? A. R. M. Swain.

Q. He was your brother's former law partner, was he not? A. Yes, sir.

Q. Where is Swain now? A. He is in Santa Rosa.

Q. And the case was then dismissed? A. It was. He subsequently—

Q. [interrupting.] Where do you reside? A. I live at 1415 Mason Street.

Q. How long have you lived there? A. Probably a year and a half or two years.

Q. Don't you live at 1720 Stockton Street? A. No, sir; I haven't resided there for four years—five years.

Q. You did live there at one time? A. Yes, sir; I did.

Q. Are you a married man? A. No, sir.

Q. You lived there with your wife at that time? A. With my mother.

Q. You are not a married man? A. No, sir.

Q. You say you have not been at Stockton Street for a long while? A. I have not been up in that neighborhood for a year and a half, or two years I will even say.

Q. Are you quite sure of that? A. Quite positive. I have been no further than Stockton and Union Streets.

Q. Do you know a very charming young lady up there that they call the Comet? A. I do not know her.

Q. Are you acquainted with the young lady that lives on Stockton Street, whether they call her that or not? A. I am acquainted with quite a number of young ladies on Stockton Street.

Q. Do you know this particular one? A. I do not.

Q. Do you know the young lady called the Comet? A. No, sir.

Q. You know they said "a rose by any other name"—do you know her by any other name? A. I don't know any by that or any other name.

Q. Do you know her, I want to know? A. No; I haven't been there for a year and a half.

Q. You used to reside on Stockton Street? A. I resided there.

Q. You used to go to this house? A. I resided in the same house.

Q. Since the election, have you been drinking? A. Oh, yes, sir.

Q. You didn't drink on election day at all; one solitary drink? A. A glass of beer, from the time of the opening of the polls until the close.

Q. You got along with just one? A. Yes, sir.

Q. That was something unusual? A. It struck me that way. I was invited many times.

Q. Since the election haven't you met Jackson at the Comet's house? A. Most decidedly and emphatically, no.

Q. Haven't you met him at any house, at 1720 Stockton Street? A. I never in my lifetime met any lady that bears the name of the Comet.

Q. You never heard that name before in your life? A. I never did, I assure you.

Q. Do you know any lady that lives there? A. Why, certainly.

Q. Who is it? A. There are two floors attached to that house I occupied. I occupied the lower floor with my mother—

Q. [Interrupting.] Don't drag your mother in here; give us that one? A. Mrs. Howard and Miss Howard resided on the upper floor. I resided on the lower floor.

Q. Mrs. and Miss Howard lived up above. Miss Howard is the lady I refer to, isn't she? A. I don't know whether you do refer to her or not.

Q. Do you know she is called that name? A. I never heard her called that name.

Q. In company with Jackson, since the election, did you call there? A. Never.

Q. You are sure of that? A. Most positive.

Q. You didn't have any conversation with Miss Howard? A. I don't know that Miss Howard resides there or not.

Q. Have you ever had any conversation with Jackson since this contest was commenced with regard to it? A. Never.

Q. Have you had any conversation with him with regard to his testimony? A. Never.

Q. Have you ever told him his testimony was wanted? A. No, sir.

Q. Have you been engaged picking up evidence? A. No, sir: I never was expected to come here until this morning.

ALEXANDER CAMPBELL, JR.

Recalled as a witness on behalf of respondent.

Direct Interrogatories.

By MR. DORN: How did you happen to request your brother to come out here? Answer—I was requested by you to send him here at two o'clock. In addition to that there was a notice or summons placed on my desk for him.

By MR. CLUNIE: Who issued the summons? A. I don't know.

Q. You don't know who issued it? A. No, sir.

Q. They didn't leave the two dollars? A. No, sir.

JOHN CORBETT.

A witness called for respondent, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Where do you reside, Mr. Corbett? A. No. 1014 Lombard.

Q. How long have you lived in this city? A. Sixteen or seventeen years.

Q. Where were you last election day? A. In the Fourth Precinct of the Thirty-fourth District.

Q. About how long were you there? A. I was acting as one of the Clerks; I was in and out; there were two of us that relieved each other at different times.

Q. Were you on in the afternoon? A. Yes, sir; I was a portion of the time.

Q. Do you know a gentleman by the name of George Ryan that lives over there in that section of the country? A. Yes, sir; I think I do.

Q. Did you see him about the polls in the afternoon of election day? A. I don't remember having seen him.

Q. Do you know a gentleman by the name of William Maxwell? A. I do.

Q. This gentleman here [indicating William Maxwell]? A. I do; yes, sir.

Q. The assistant council for the contestant. Did you see him about the place on election day in the Fourth Precinct of the Thirty-fourth Assembly District? A. I saw him once, and I cannot say now when it was—what time it was. I saw his face.

Q. Do you know a man by the name of Barry, who lives up in that section of the country, and who recently died—who died before election? A. No, I think not.

Q. Do you know whether the name of Barry was voted at the last election? A. I don't recollect. I think it was. I am not sure.

Q. Do you remember the circumstance that occurred at the time Mr. Barry's name was voted? First, Mr. Pistolesi was one of the Inspectors, was he not? A. He was.

Q. And a man came in in the afternoon and offered to vote the name of Barry? A. I don't recollect the name that was called.

Q. Just tell us the circumstance that did occur that afternoon, and what you saw? A. I was sitting at the writing desk or table inside. I don't know whether I was writing down the names or checking on the precinct register, when somebody comes at the window to vote, and I don't recollect what name was called—whether it was Barry or not. There was a little delay and an altercation, and I heard Pistolesi ask the party, "Are you sure that is your name?" That is about the only thing I distinctly recollect, and I laughed and remarked to the party sitting next to me—it was a party sitting next to me—"It was a hell of a question to ask a man, if he knew his name."

Q. When I mention the name of Barry, does that refresh your recollection as to the name? A. No, sir.

Q. You cannot state? A. No, sir.

Q. You do remember, though, that a person who presented himself during the afternoon, and he was asked by Mr. Pistolesi, the acting Inspector, "Are you sure that is your name?" A. Yes, sir.

Q. What next occurred? A. I heard somebody outside—I didn't raise my head to look—say, "He is all right; he is all right."

Q. You heard that said? A. Yes, sir.

Q. You don't know who said it? A. No, sir.

Q. Do you know whether the ballot was then deposited in the box? A. I think it was.

Q. And you are quite positive you wrote the name down, or checked it off? I did either one or the other; I can't recollect which it was.

Q. Then, whatever the name was, Mr. Pistolesi did ask him, "Are you sure that is your name?" A. Yes, sir."

Q. And some one on the outside answered, "He is all right?" A. Yes, sir.

Q. That was the language that was used, and you are positive? A. I am pretty positive.

Q. Wasn't this language used: "He lives in my house;" or, was it, "He is the man?" A. I don't recollect any such language that "He lives in my house."

Q. Did you see Mr. Maxwell there at that time? A. I cannot say whether I did or not.

Q. What is your best impression? A. I can't say whether it was just at the time, or not.

Q. Was it very near that time? A. I think it was.

Q. As a matter of fact, wasn't Mr. Maxwell there at that time, and didn't you see him there at that time? A. No, I wouldn't like to say so.

Q. Do you know whether anybody accompanied this man that offered to vote? A. There were two or three men at the window.

Q. There were two or three men at the window, but you won't now state who they were? A. No, sir.

Q. This conversation did take place though, and the man voted. A. Yes, sir.

Q. You are unable to state just what the name was? A. I am unable to state.

Cross Interrogatories.

By MR. CLUNIE: What attracted your attention was that you heard Mr. Pistolesi asking the question, did you? A. Asking the man if he was sure that was his name.

Q. And that was such a foolish question you looked up; was that it? A. I think it was more than anything else.

Q. Then when Mr. Pistolesi asked it, and when you found who asked it, you were not surprised; is that it? You know George Ryan, don't you? A. I do know him, yes.

Q. You did not see him at that time? A. I don't recollect; I don't know; I might have seen him. If I did, I did not recognize him, looking against the light, and parties standing with their backs to the light looking in I would have to look sharp.

Q. After Mr. Pistolesi asked this question, you heard some one on the outside say, "He is all right?" A. Yes, sir.

Q. You don't know whether they were talking to Mr. Pistolesi, or to whom they were talking? A. Well, I don't know.

Q. You don't know whether there was some one on the outside addressing some one else, or whether it was addressed to Mr. Pistolesi? A. I think it referred to Mr. Pistolesi.

Q. But who made it, you don't know? A. I do not.

Q. That is all that occurred at that time? A. Yes, sir.

Q. And you don't recollect seeing Mr. Ryan there, or anybody else? A. I don't recollect seeing Mr. Ryan there.

Q. And you did not hear the words said, "He is all right; he lives in my house?" A. I remember hearing the words, "He is all right."

Q. Do you know who lived in that house? A. I do not.

Q. How long did you stay there? A. About an hour or two hours.

Q. Do you know when this Board took an adjournment? A. No, sir; I don't recollect.

Redirect Interrogatories.

By MR. DORN: What time were you on the count of the votes? A. I was on from the closing of the polls until about midnight, or near it.

Q. Then when did you go on again? A. In the morning.

Q. How long did you remain? A. During the forenoon.

Q. Then you went away, did you? A. I went away and stayed away.

Q. How long did you stay away? A. I stayed away in the afternoon, and come again in the evening and stayed until midnight.

Q. When did you come on again? A. Next morning.

Q. And following on? A. The same hours the next day again.

Q. Was Mr. Pistolesi on the same watch with you? A. He was.

Q. During the same time? A. Yes.

Q. You divided up into shifts, did you? A. Two shifts; yes, sir.

Q. You worked six hours? A. Yes, sir.

Q. That day and the next day? A. After the close of the polls.

Q. Who was acting as Inspector at the time you were there? Was it Mr. Pistolesi, or was it the other Inspector? In other words, who called ballots while you tallied there? Which one of them? A. I think that Mr. Harman was the first one.

Q. How long did he call; do you remember? A. I don't remember.

Q. There are two Inspectors, are there not? A. Yes; Mr. Harman and Mr. Pistolesi.

Q. And you don't know which was on watch with you? A. I know they were both on some times. I know that Mr. Harman stayed there beyond the allotted time.

Q. He stayed there more than his time? A. Yes, sir.

Q. During the time you were in the Board, and during the time you were acting as Clerk there, was there any adjournment of the Board at any time for any length of time—when the Board took an adjournment and went away and left the ballots in somebody else's charge? A. No, sir.

Q. Was there any adjournment when the Board left the room? A. No, sir.

Q. Was there any such thing happened? A. Not during my watch.

Q. If it had happened, you would have known it? A. I would have known it, and I would have objected to it if it had been done.

GEORGE HESKETH.

A witness called for respondent, was duly sworn, and testified as follows :

Direct Interrogatories.

By MR. DORN: Mr. Hesketh, where do you live? Answer—No. 327 Filbert.

Q. How long have you lived there? A. I should say about nine years.

Q. Do you own the property there? A. Yes, sir.

Q. What precinct and Assembly District is that? A. It is in the Second of the Thirty-third.

Q. At the last election, did you act in any capacity in the Election Board? A. I was additional Inspector; I was appointed as such.

Q. Why do you say you were appointed as such? A. Because very frequently, when I was on duty, I was hustled out, and told I had no business there as an Inspector.

Q. Who told you this? A. A man by the name of O'Neill. That is what I understood his name was. He told me he was the Inspector of that precinct.

Q. He told you you hadn't any business there? A. Not when he was there.

Q. He told you you hadn't any business there, and hustled you out? A. That is about it.

Q. What is this man in politics? A. I couldn't tell you.

Q. He was the other Inspector there? A. He acted as such.

Q. He run things, and when he was on deck he took charge? A. Yes, sir.

Q. As a matter of fact, on all the Boards at the last election there was one Republican and one Democratic Inspector, wasn't there, and he was the other Inspector at that precinct, wasn't he? A. Yes, sir.

Q. You say you were appointed, but you were not allowed to act? A. I was allowed to act occasionally, when it suited him; when it suited him and his party.

Q. After the polls closed, who took charge of the ballots, and who started in to attend to their counting? A. I think it was me, and I think it was the Democratic Judge; I think so. We each put our names on the ballots.

Q. Wasn't it the Democratic Inspector and yourself who put your names on the ballots? A. I don't think so. I think he was not in a condition to do so.

Q. You think not? A. I think not.

Q. That is this man O'Neill? A. The man O'Neill, I am most positive it was not he.

Q. You think that he was not in a condition to put his name on them or anything else. Was he troubled of mind, or had he got religion, or what? A. I couldn't say.

Q. To put it in plain Anglo-Saxon, he was drunk, was he not? A. I don't know. They all seemed to take so much in there. If I had taken a fair proportion I would have been over at Lone Mountain now.

Q. Who called the ballots there? A. Who read them off?

Q. Yes. A. The Democrats.

Q. Did this O'Neill call the ballots off? A. Not many, I think; very few.

Q. Who did call them off? A. I don't know his name; I did not know any of the names scarcely, only John Brown. When I was there for about an hour I came to the conclusion I didn't want to know any of them—in one hour.

Q. In one hour you concluded you were not anxious to form their acquaintance? A. No, sir.

Q. Describe to us how this Democratic Inspector or Judge called these ballots. Did he hold them up with a calcium light on them, or did he hold them down in his pocket? A. In the first commencement, it seemed to run along very well; the thing seemed to go all right for probably until two or three o'clock in the morning; then there was a little dissatisfaction commenced; for some reason the Republican watcher vacated his seat and a man they called Jim Butler took his place, and he spread himself out so that nobody could get near.

Q. He you call Jim Butler other people call "Brick Butler," don't they? A. I cannot tell you what they call him. I have heard him called "Brick Butler" the last few days. I cannot call him.

Q. And he is another man you are not anxious to know? A. No, sir; I don't want to know him.

Q. You say about two or three o'clock he got in there and spread himself out, and what else did he do? A. He spread himself out and I protested, and I tried all I could to get him out, and they called me a crank and said I was the only one interrupting the business, and I was insulted, and I did all I could do to get him out, but it was no use. About four o'clock in the morning there were two young men come in there that seemed to know these parties very well, because they tried to straighten him, and they seemed kind of humble, and they found out they had met their match, but still it was referred to the Republican watcher to see where he was—whether he should come out of there, and whether he should see, and he said he could see, but he could not; so I concluded he was either a coward or a knave; that was the Republican watcher. It went on so until morning, when I went off.

Q. What did you do when you found things going in that condition? A. Me and Mr. Brown took a walk down town; I went home and got some breakfast, and we took a walk down to see how the election was going, and Mr. Brown left me—that is, the Republican Judge—and I called in and told them the state of things—

Q. [Interrupting.] Told whom? A. I told them what I guessed it was; I don't know much about their affairs anyhow; it was the Republican

County Committee: I think it was on Kearny Street, near Market. I went up stairs, and I told them the state of affairs: I told them I was sure—

Q. [Interrupting.] As a matter of fact, that was the headquarters of the Republican County Committee? A. Yes, sir. I went up and explained to them: I told them everytning was not running satisfactory; there was every chance for them to do what was not right, and although I could not swear that such was the case, I was under the impression that they were not doing right.

Q. That was your impression? A. That was my impression.

Q. Why were you under the impression that they were not doing right? A. In the first place, Dr. O'Donnell's name run out very often, and after a while it came out very, very seldom, and when it did come out there was a kind of a slight yell at it.

Q. That is whose name? A. Dr. O'Donnell's. It did not come out very often for three or four hours.

Q. Do you think everybody's else was counted squarely except Dr. O'Donnell's? A. No, I don't think they were.

Q. About the Senatorial fight, what was your experience with regard to that in that precinct? A. I had kind of made up my mind when the Republican watcher did not take his proper position that he was not doing his duty, and he would neither go in, or he was afraid or something, and of course I was afraid, and I stated so at the rooms on Kearny Street.

Q. In other words, you were terrorized? A. Yes, sir; I was terrorized, and not only myself, but others as well.

Q. They were conducting themselves in that way, and not conducting themselves as respectable citizens, and things were in their own control? A. I dont know exactly that it was in their own control, but it seemed it was in their own control, but they didn't listen to what I said.

Q. And you were one of the members of the Board? A. Yes, sir.

Q. You were appointed as Inspector? A. Additional Inspector; yes, sir.

Q. Tell us what you discovered about the vote for Senator? A. There, after two or three ballots or so—I think it was about three o'clock in the morning—of course when two of them called and a straight Democratic ticket came out it was brought out with a flourish, but when any other ticket came out it was kept covered—nobody could see it. All you could find out about it was what was read off.

Q. You were not allowed to see the ticket? A. No, sir.

Q. Anything except the Democratic ticket, and that was waved? A. That was understood "straight Dem."

Q. Were those covered up with a blanket? A. No, they were not covered up with a blanket, but a man was holding his hands so [indicating], so that there was no distance.

Q. You mean the hands were held with the arm bent? A. Yes, sir.

Q. And one hand on one side, and the other hand on the other side? A. It was held so I don't think anybody could see three feet off, and you would have to get right over him to see it.

Q. Supposing this piece of blotting paper to be the ticket; the Inspector would hold his hands out that way, one on each side? A. The man that was read off, yes, sir.

Q. So nobody could see except he got right over? A. I couldn't see where I was, about five feet off.

Q. And you made the effort to see? A. Yes, I made the effort to see.

Q. And you protested against that? A. I told Mr. Brown to keep a sharplookout. I called the Republican watcher, and I told him the thing didn't look to be running right, and I said, "You see there what I sup-

posed straight Republican tickets go in with Sullivan's name on them?" and he says, "No, I didn't see it: I was watching close and I didn't see." It was said loud enough that almost everybody in the room might hear. So he waited a minute, and he got up and said; "Here, do you think I am doing any trick," and I said, "I don't know," but it looked very peculiar to me. He says, "Well, come here. I have got a little bottle in my pocket, and come and take a drop." So I just touched it to my lips; I didn't take three drops scarcely; I just merely touched it, and he says, "Now, I will keep a good lookout." Those were his words.

Q. As soon as you accused him of doing wrong he produced the bottle? A. Not immediately; it was after. He said, "Here, I keep a little of my own stuff, and take a drop."

Q. He hadn't offered you a drink until you accused him of robbing the Republican party of votes? A. I didn't accuse him of robbing them; I said it didn't look straight to me. I didn't swear that they were doing any robbery. I couldn't swear that.

Q. It didn't look straight to you when Sullivan's name was called three successive times on three Republican tickets? A. If it had come out occasionally I wouldn't have noticed. I had got interrupted once before, and I thought it was going far enough.

Q. When they worked it so strong, and called Sullivan three times on Republican tickets, you thought it had gone far enough. A. Yes, sir.

Q. And you protested? A. I protested to the watcher. Of course there were others heard it all. Mr. Brown heard it, and the Republican did that was handing out the ballots, and I guess some of the Republicans. I am confident that the Republican Clerk heard it, and I guess that all heard it that were there, if they wanted to. They could hear the dissatisfaction.

Q. This is the precinct where, upon the recount, O'Donnell gained eighty votes, is it not? A. I believe so. So I see in the paper.

Q. Then it was evidence, if O'Donnell gained eighty votes on the recount, that something was wrong in that calling, at least? A. Yes, sir: it was evident to me that something was wrong. When my attention was first called to it, I said I was not the first particle surprised.

Q. Why do you say that? A. Because there was every chance, and it looked to me exactly as if such business was being done, and there was every opportunity for it.

Q. That was while the Democratic Inspector was calling the ballots? A. I don't know whether the Inspector was calling them or not; it was a frequent change with them.

Q. It was one of the Democratic officers? A. Yes, sir; no Republican had a hand on the ballots, except handing them out of the box. When he first started, he opened out the ballots; but after a while he said he shouldn't do it, and it was handed across.

Q. You say for a little while the Republican Inspector opened the ballots? A. Yes, sir.

Q. And after a while they stopped him? A. Yes, sir.

Q. And they announced that he should not touch them? A. I don't know that they announced that, but they took very good care that he should not touch them, and one of them after the other jumped in, and there was no use to say anything about it.

Q. Why wasn't it necessary to say anything? A. Because they jumped up immediately when any question was raised, and they stormed and carried on, and of course they had their own way.

Q. Whenever any objection was raised, they would raise a fuss and attempt to thrash everybody? A. No, they didn't attempt to thrash

everybody, but it was made in such a way that you were to understand that you were to keep quiet.

Q. Where did they keep this crowd that created this disturbance? A. It was an old broken building, and I believe there were two or three rooms over there, and they were in and out there.

Q. This man whom you have called James Butler, and that you have recently learned was called "Brick Butler," did he call off any ballots? A. Not while I was there; no, sir. I didn't see him read any ballot, and in fact he never read a ballot while I was there.

Q. He simply confined himself to spreading himself out? A. He took the ballots from the man that read them, and put them on the file for a while, then he kind of fell over, and went off in a dose.

Q. He took the ballots and put them on file? A. Yes, on file.

Q. Was there any member of the Election Board there that did that? A. They were all members in turn, and they all seemed to have about equal power.

Cross Interrogatories.

By MR. CLUNIE: You were appointed from the Registrar's office, were you not? A. Yes, sir.

Q. You got your instructions, in case any trouble occurred, to report them to the Registrar? A. No, sir; I got no instructions. When I was appointed, I went to ask instructions, and they told me I would receive them when I got there, and that is all the instructions I got. I don't know anything about politics.

Q. Did you receive any instructions when you got there? A. No, sir.

Q. Did you get none? A. Excepting I took up the Code, and tried to find out what my duty was.

Q. Did you find it out? A. No, I couldn't say that I could go right through it in a few minutes, but I tried to find out what I could of my duty.

Q. You didn't think your duty was to go there and tell the whole Board what to do? A. No, sir, I did not.

Q. I understand you went there and you wanted the Board to do something, and they refused to pay any attention to you, and called you a crank, and you got insulted? A. No, sir; they didn't call me a crank then; they called me it afterwards.

Q. They did not know you very well, then? A. Yes, I am tolerably well known here in the city.

Q. I mean the Board, there? A. No, because I didn't go around in that neighborhood. That is a neighborhood I always shunned.

Q. They didn't hunt you, did they? A. No, sir.

Q. They didn't seem very anxious to meet you? A. Yes, they were anxious I should know Butler, and wanted I should do something for them, and they said, "You have got your living, and I have got my living to make." And I said, "What do you want me to do?" He said he wanted me to vote for so-and-so.

Q. Who did he ask you to vote for? A. He asked me to vote for Mayor Pond, and several of the heads of the tickets, and I said "no." flatly, and went away.

Q. As soon as you found he wanted you to vote for Mayor Pond, you refused, and went away? A. No, sir; he asked me would I assist him, and I said in what way, and he asked me to vote for several parties.

Q. He asked you to vote for Mayor Pond? A. Yes; he mentioned three or four names at the head of the ticket.

- Q. He asked you to vote for Mayor Pond for one? A. He asked me, as a general thing, to vote for the head of the ticket.
- Q. Didn't you say he asked you to vote for Mayor Pond? A. I believe Mayor Pond was one.
- Q. Who else? A. I couldn't say; but he run over the head of the ticket, and I told him flatly "no," and I walked away from him.
- Q. You would not vote for the head of the ticket? A. He asked me to kindly help him. He said it was his bread and butter.
- Q. To get you to vote for those people? A. I suppose that was his meaning.
- Q. And you told him you would not vote for them at all? A. Yes, sir.
- Q. That was because you were a Republican? A. Yes, sir; I was a Republican.
- Q. And as soon as you found out that Butler was a red-hot Democrat, and wanted you to vote for Democrats, you didn't want to get acquainted with him? A. He asked me to do so-and-so, but I most decidedly made up my mind if I could vote for anybody in place of Strother I would have done so.
- Q. You voted for Strother, did you? A. No, sir; I did not.
- Q. You scratched him on the Republican ticket, did you? A. He was not there that I am aware of.
- Q. You are a Republican, are you not? A. Yes, sir.
- Q. You never intended to vote for him, did you? A. No.
- Q. What did you want to talk about voting for him for? A. I would have voted for any man on my ticket, that is for the place, except Strother.
- Q. I don't understand you. You were willing to vote for any man on your ticket Butler asked you for, except Strother? A. No, sir, I was willing to vote but for the heads of the ticket for him, if he would scratch Strother on his ticket.
- Q. That is the basis. A. That is the basis.
- Q. You were an officer of election, and you went to Butler, and you had been sworn to perform your duties faithfully? A. Yes, sir.
- Q. And you went there on election day, and you asked and did you get Butler to scratch Strother? A. I did not.
- Q. You stated you wanted him to? A. No, I didn't say I wanted him to.
- Q. Didn't you swear a minute ago you wanted him to? A. No, I did not.
- Q. Didn't you swear a little while ago you would have voted—— A. I swear I would have done——
- Q. [Interruptingly.] Wait a minute. Didn't you swear a minute ago you would have voted for anybody on your ticket that Butler would have asked you for, except the head of the ticket, if you could have got him to scratch Strother? A. I said I would have done so, but our conversation came to an end before it got that far.
- Q. You intended to ask him that if you ever got the chance? A. I would have asked him, and I wouldn't have been aware that I was doing wrong. I wouldn't have been aware that I was doing wrong as an officer of election; that I was doing anything wrong.
- Q. Did you ask anybody up there to vote against Strother? A. Yes, I might have asked one or two, and they promised me to do so.
- Q. On the day of election? A. No, it was a week or two.
- Q. You were talking with Butler? A. Yes, I believe it was in the morning, just before the polls were opened.

Q. You talked with Butler about Strother, didn't you? A. No, I never mentioned anybody but it come so far I got disgusted with him asking me to vote against the head of my ticket, and I got disgusted and went off and left him.

Q. As soon as he asked you to vote against Harrison and for Cleveland, or for Pond, you became disgusted and went off and left him? A. Yes, I left him.

Q. I understood you to say you were so disgusted with Butler. A. I don't know that I said I was disgusted.

Q. I know it. A. I might have said it, but I don't know about being disgusted. I wouldn't give the heads of my ticket for anything—for anybody.

Q. You are a pretty strong partisan, aren't you? A. No, sir; I have no part in politics at all. I am an individual, but still all my sympathies are with the Republican party.

Q. You always vote the head of the ticket, don't you? A. I always vote the straight ticket; that is. I have always done that.

Q. You were going to change this time? A. Well, I would—

MR. DORN: [Interrupting.] One moment. I ask the Court to instruct the witness that he is not required to say how he voted at any time; and he need not tell that unless he wishes to. I ask your honors to give the witness that instruction for his information.

THE COURT: He has not been called upon to do so yet.

THE WITNESS: Your honor, I am not much acquainted with either the Court or Justices or politics, I may be led into little errors.

By MR. CLUNIE: You say you did not want to become acquainted with Butler or any of those people, is that it? A. That is about the way it stands.

Q. What was the reason of that? A. Because I have no business with that kind of people.

Q. Did you have any business with him that day when you went there? A. I don't know as I had any business with Butler; I didn't know he was an official.

Q. You said in your direct examination you did not want to become acquainted with them. Did you go there with the idea of not becoming acquainted with them? A. I did not.

Q. When did you commence to want to tell them what to do? A. I didn't want to tell them what to do.

Q. You got up and wanted to tell them what to do, and they didn't let you, and you got insulted? A. No, sir; I didn't get insulted.

Q. Didn't you testify that you got insulted? A. I don't know particularly that they insulted me, but I saw things were not going to please me.

Q. And because you could not run the whole business? A. No, sir; I didn't go to run the whole business. When a man don't understand a thing he doesn't try to run it.

Q. You said you went there and made suggestions to them, and they wouldn't do it, and you didn't like it, and you thought something was going wrong; isn't that it? A. I am not sure particularly that I made any suggestion to them.

Q. You said in your direct testimony every time you made a suggestion they would tell you they would throw you out? A. No; when I was taking ballots, when it suited them, I was of course relieved immediately and told I was only an additional Inspector and the Inspector took my place.

Q. That was the fact, wasn't it? A. I suppose it is, but I don't know

whether I had the right to still hold my duty or not. I was not satisfied on the question and am not now, for I never asked.

Q. Then you became dissatisfied because they told you you were only an additional Inspector, that the regular Inspector was there and would read the ballots? A. I was not dissatisfied.

Q. You liked it, did you? A. No, sir; I did not like it.

Q. When did you first become dissatisfied? A. The first I was dissatisfied was about an hour after I was taking in the ballots, I was hustled out without any ceremony, and of course I didn't know then whether the men had the actual right to put me out or not.

Q. Who put you out? A. O'Neill.

Q. Who took your place—the regular Inspector? A. The regular Inspector, O'Neill.

Q. What was said at that time? A. There was not much of anything said; of course I retired; I was on the other side of the ballot box.

Q. And you became dissatisfied? A. No, I was not exactly dissatisfied. I might not like it very well, but I was not positively certain whether I had a right to be put out of there or not. I was under the impression that we would have a certain length of time each there, but I was undeceived.

Q. You were requested to step out? A. I did so.

Q. And the Democratic man stepped in? A. Yes, sir.

Q. Then that went along how long, there? A. I suppose that went along until they retired and I took the position again.

Q. And you went in again? A. Yes, sir; I went in again about three or four o'clock in the afternoon and stayed in until the last ballot was in.

Q. You stayed three or four hours? A. Well, probably three hours; something like that.

Q. You stayed there, then? A. Yes, sir.

Q. That was all right, wasn't it? A. Yes, sir; there was no complaint.

Q. You didn't make any objection at all up to that time? A. I don't know as I made any particular objection anyway. I said I didn't very well like it because I didn't know how it was when I went there.

Q. Then it was your fault, wasn't it, that you got in this trouble? A. Probably it was. I didn't say any trouble.

Q. But you are coming on the stand and trying to make the public believe that there were great frauds there by the Democrats? A. No, I aint; I merely tell you what come under my observation. Before going any further, I haven't one single cent's interest anyway. I never wanted office, or wanted any position or office or anything else.

Q. But you are liable to change? A. No, I don't think so.

Q. You went there in the morning, and took your place as Inspector? A. Yes, sir.

Q. You stayed there a while, and they came along and put another man in your place? A. Yes, sir.

Q. And you retired and sat by the ballot box? A. Yes, sir.

Q. Nobody told you to get out of that place, did they? A. No, sir; I was near the box.

Q. Nobody raised any objection to that? A. No, sir.

Q. And you retired voluntarily when they asked you; is that it? A. I didn't interfere with anybody, nor I was not a great deal interfered with, except, as I have told, Butler got angry.

Q. Let us get during the day. During the day you retired when they asked you to, is that it? A. Yes, sir.

Q. You stood by the side of the ballot box all the rest of the day, up to four o'clock in the afternoon, is that it? A. No; I was there in the neighborhood.

Q. But you didn't stand at the ballot box all the time, did you? A. I was there by the ballot box, taking ballots.

Q. You did not stay there all day? A. I was there in the commencement.

Q. You were there in the commencement, for how long? A. For half an hour or an hour.

Q. Then you were asked to retire? A. Yes, sir.

Q. You went to the other side of the ballot box? A. Yes, on the other side; and I asked questions sometimes of the parties that came to put in their ballots.

Q. They let you do that, didn't they? A. Yes, sir.

Q. And there was no objection to that? A. No, sir; there was no objection to that.

Q. And the other man took the ballots up until about four o'clock in the afternoon? A. I couldn't say.

Q. Well, around that? A. Yes, sir.

Q. And you took ballots from that time up until the polls closed? A. Yes, sir.

Q. And there was no trouble up to that time? A. There was no trouble at all until after the polls closed.

Q. Then the polls closed, and you signed your name on the ballots? A. Yes, sir; I put "G. H." on them.

Q. You put the number down on them? A. No numbers were put on.

Q. Didn't another man put the numbers down? A. No, I think our initials were put on; that is my impression.

Q. That is all you think was done? A. I can't be positive.

Q. You are an election officer? A. I told you I was an election officer without any instructions, and I didn't know my duty, but once in a while I would take the Code and try to find out.

Q. If anybody had numbered these ballots, you would have seen them, wouldn't you? A. I don't know. I was there, but I will tell you the Democrats had two of the smartest penmen that there are in the city and they were very rapid in their work; it took me all my time to get my initials on them and they put more writing on. They were pretty quick, and I put my initials on as fast as I could lay them aside.

Q. To the best of your knowledge and belief, those ballots were not numbered at all? A. No, I am not positive, because they may have been numbered.

Q. Do you think they were? A. I was under the impression he put his initials on, but still they might have been numbered; it was so rapid it kept me going so fast I didn't have much time.

Q. Is your eye-sight good? A. It is good at a long distance, but not very close. At a long distance I have got a pretty good sight. I can see better at ten or twenty feet than I can at one foot.

Q. Or five? A. Or five.

Q. You can see better twenty feet off than five feet; is that it? A. Yes, sir.

Q. The ballots were all signed and put back in the box? A. Yes, sir.

Q. Nobody tampered with them? A. Nobody tampered with them.

Q. The man that was taking the ballots out sat in a chair didn't he? A. No; he stood by, at the ballot box.

Q. Who was it stood by? A. It was Mr. Brown.

Q. Was he one of the bad Democrats? A. No, sir; I don't know whether he is a bad Democrat or not.

Q. Mr. Brown didn't do anything wrong, did he? A. I didn't see him do anything wrong. He handed me the ballots.

Q. He was the Republican was he? A. Yes, sir.

Q. Then he didn't do anything wrong, of course? A. He did nothing that I saw.

Q. Mr. Brown stood by the ballot box and took the ballots out. What did he say? A. In the first place, as he was taking them out he opened them and looked at them, as I say, and then he handed them over to the man across and read them.

Q. He handed them over? A. Mr. Brown read the ballot and then passed it over.

Q. Then the ballot was passed by you? A. No, sir; I never handled a ballot after they went into the box.

Q. Who was the ballot handed to? A. It was handed to one of the Democrats, whoever happened to be there.

Q. The man that was sitting down, it was handed to, wasn't it? A. I believe it was.

Q. Who was that? A. It might be O'Neill, and it might be somebody else.

Q. Will you swear it was O'Neill? A. No, sir.

Q. Will you swear it was any Democrat? A. I was under the impression they were Democrats.

Q. You wouldn't swear it was a Democrat? A. No, I wouldn't swear anything. I couldn't be positive enough to swear.

Q. You wouldn't be positive enough to swear to anything a Democrat did? A. I wouldn't say that, because I know some very good Democrats.

Q. Whatever was done, he started in to read the ballots? A. Yes, sir.

Q. He opened them? A. Yes, sir.

Q. And you looked at them? A. I was looking at them and at the books, alternately.

Q. And you watched them as good as you could? A. Yes, sir.

Q. And that was a watcher for the Republican party? A. I don't know, sir. There was another one they called young Nelson; but the other portion of the time I was distrustful.

Q. I ask you whether or not that was a man sent by the Republican party? A. Yes, I had a card from one—I had a card from two different ones; it was handed me. That is, through the time it was counting; not both at once.

Q. Was there a man handed you a card and told you he was a Republican watcher, at the time you commenced counting? A. No, sir.

Q. That was a man that you knew to be a Republican watcher? A. They say young Nelson was a Republican, of course.

Q. He was there for the Republican party? A. I don't know.

Q. He suited the Republican party well enough, didn't he? A. I think young Nelson did his duty faithfully.

Q. He was there how long? A. I can't say how long; he was there probably one watch.

Q. What is one watch? A. Five or six hours.

Q. You had it divided up into watches? A. That is the way it was.

Q. Did you? A. That was the way it was next day, for I would go on at six and come off at twelve. And in the night again, but sometimes we were not very punctual to half an hour.

Q. Young Nelson was there when you started? A. Oh, I can't say that; but he was there some portion of the time.

Q. But there was no fraud at all while Nelson was on the watch, was there? A. I don't think there was.

Q. Then you were satisfied of that, were you? A. I seemed to be satisfied until in the morning.

Q. In the first watch you were all satisfied, then? A. Yes; I didn't know much—I was probably there only a portion of the watch, because I remember coming on at twelve and staying on until six, so I may have only been on a portion of it before twelve o'clock. I may have been there the greater portion before twelve.

Q. Won't you swear whether you were there or not? A. Yes, I was there.

Q. What watch were you there? A. I was there taking the ballots out.

Q. They were taking them out on every watch, weren't they? A. I saw the men reading them, and I saw the Clerks putting them down.

Q. On which watch? A. I was there a great deal of the time; I was there a portion of the time.

Q. How long? A. I might have been there two, or three, or four hours, but I couldn't tell you definitely how long I was there.

Q. During that time there was a Democrat calling, was he? A. Yes, sir.

Q. That took up until twelve o'clock, and the first watch finished then, did it? A. Whatever time the Inspector come on, I went off.

Q. Don't you know the time? A. That was when I was supposed to go on. I would go off at six at night and come on at twelve o'clock.

Q. Then between six and twelve you were not there? A. Yes, sir; I was there a great portion of the time.

Q. But you were not there as a regular Clerk or watcher? A. No, but I was there.

Q. There was a member there in your place? A. Yes; I was standing looking on most of the time.

Q. Wasn't there another man there in your place? A. Yes, I was relieved.

Q. And you were there? A. Yes, sir.

Q. Did he find any fault? A. No, I don't think he found much fault; never in my presence.

Q. This thing ran along all right up to twelve o'clock? A. No; probably two or three o'clock. It might be two or three o'clock when Mr. Butler got in between, and wouldn't come out of the place.

Q. Everything went right up to two or three o'clock? A. I should judge that.

Q. And Mr. Butler got in between? A. Yes, sir.

Q. Who did he get in between? A. He got between the ballots they were reading and what was supposed to be the Republican watcher.

Q. Then somebody says to the Republican watcher, "You cannot see up there?" That remark was made to the Republican watcher, wasn't it, by some one: "You cannot see there?" A. No. When Mr. Butler got in there, I tried all I could to get him out.

Q. Will you just answer the question: Did anybody say to the Republican watcher and ask him if he could see the ballots after Mr. Butler got in? A. That was in the morning; that was some hours after.

Q. At two or three o'clock did anybody ask the Republican watcher if he could see? A. I cannot say that they did in the early part of it.

Q. Did the Republican watcher make any objection? A. No; he didn't make any objection. I asked him to take his place, and he said he could

see, and I felt confident that he could not see; and then I wrangled and tried to get the man out.

Q. Then Mr. Butler went in between, and the Republican watcher said he could see, and you said he could not see? A. I was under the impression that he could not see; I felt confident of it.

Q. He knew better than you did, whether he could see? A. Yes, sir.

Q. And you got in a wrangle? A. I wanted Mr. Butler out, because I thought it ought to be a different way. I was under the impression that the Republicans had a right to a watcher next to the reader, as well as the Democrats.

Q. Don't you know, as an officer, that every citizen has a right to watch the count? A. I don't know; I understood that under certain circumstances they could put all out, only one watcher.

Q. That is your idea of the duties of an election officer—that if the Board wanted to they could put everybody out except one watcher? A. On each side.

Q. Where did you get that information from; did you get it from the Republican County Committee? A. I am most confident that the policeman read that off one time.

Q. Who was that? A. He was the policeman there.

Q. Did he get up and read that off? A. Yes, sir.

Q. What did he want to do that for? A. Because there seemed to be some trouble; there was a man by the name of Hefron.

Q. The Republican watcher said, while Butler was in there, he could see? A. He said so.

Q. And he read right on and you had no complaint? A. That was about it; he was satisfied, but I was not satisfied.

Q. And you informed the Republican watcher that you were not satisfied? A. No, I did not; I tried to get him out, and they asked him and he said he could see. I did all I could to get him out, and it was all confusion, and he wouldn't come out.

Q. You wanted to locate him in a different place? I don't know if he had any business in the rooms. I was rather under the impression that Mr. Butler was not an officer there at all; of course he might be.

Q. You wanted to get alongside? A. It was but right that he should be alongside them when they were reading the ballots.

Q. You wanted to get the best of it? A. I didn't want anything but justice.

Q. You thought the Democratic boys had the best of it? A. I think so. They will have the best of everything where it is.

Q. That is the way you felt towards the Democratic party when you went there, isn't it? A. No, I can't say; at least it seemed to look to me that way, as far as it went.

Q. And you just learned that since the last election; is that it? A. I think if there is anything within reach they will get it.

Q. Did you think that when you went there as an officer of election? Did you feel that way then? A. I couldn't tell you how I felt.

Q. Did you feel that the Democratic party would take anything within reach, when you went there? A. It was my impression that they did all they could, to make the best they could out of it.

Q. You thought the Republican party would make the best of it? A. I don't know much about politics.

Q. But you did know the Democratic party would take everything within reach? A. I think they will.

- Q. You think the Republican party won't refuse anything? A. I don't know.
- Q. You knew they got it away from Tilden? A. Well, I heard it, but I didn't believe it.
- Q. You wanted Butler removed from his position? A. I wanted to see the thing run off smooth.
- Q. You asked him to come out? A. Yes, sir.
- Q. And he declined to do it? A. Yes, sir; I got angry because he didn't—because it was not enforced that he should come out. My anger didn't do any injury to anybody. I think if it had injured anybody it would be to myself, because when I get nervous I get sick, and it affects me very easily.
- Q. Butler didn't get out, and he sat there right along? A. Yes, sir.
- Q. You and your friend Brown went to take a walk, didn't you? A. After we went off we went and got breakfast, and then we went down town.
- Q. You went to the Republican Committee? A. I did, but I don't know whether he did or not.
- Q. Did you live home? A. Yes, sir. He said he wanted to meet a boilermaker friend, and went off and left me.
- Q. You went down to the Republican County Committee, and told them you did not like things there? A. I told them it did not suit me.
- Q. Did they send up and change the watcher then? A. I believe they did send a man down there to come there to try to straighten out things.
- Q. Did they take this watch away? A. I don't think they did.
- Q. Even the Republican party didn't get in and conform to your views, is that it? A. I don't know as I saw anybody that was particularly interested.
- Q. Didn't you go down and tell the Republican party you were not suited? Didn't they seem to feel sorry when they found that out? A. I don't know; I didn't ask them.
- Q. They didn't make any changes? A. They didn't seem to.
- Q. They were perfectly satisfied with that man? A. I guess they were: he was there pretty much all the time I was there.
- Q. What was his name? A. I couldn't tell you his name.
- Q. You didn't want to know his name, either? A. No.
- Q. You didn't want anything to do with him? A. All I know about him he said he come, I think, from Twenty-eighth and Harrison. That is what I understood.
- Q. And he was watching there for the Republican party? A. That is what I understood from the conversation I heard him speak several times.
- Q. What time did these three ballots come out that you tell about that were straight Republican ballots? A. I believe they came out probably about half past two in the morning.
- Q. Where were you then? A. I was alongside of the ballot box, and between the ballot box and and the Clerks—the Republican Clerk.
- Q. That is on the other side of the table, isn't it? A. No; the table is along here [indicating], and the ballot box was on the end, and I was there [indicating].
- Q. Were you close to the clerks? A. Yes, sir.
- Q. You were on the end of the table, as I understand you? A. Yes, sir.
- Q. And the ballot boxes were here [indicating]? A. Yes, sir.
- Q. And the Republican Clerks were over there [indicating]? A. Yes, sir; and I was next to them.
- Q. And the Inspector was here [indicating]? A. Yes, sir; he was two thirds of the way up the table.

Q. You were over here [indicating]? A. Yes, sir.

Q. Butler was over behind? A. Butler was not there at all on the second morning; he was not in between—there was nobody in between the Republican watcher and the man who was reading the ballots. There was nobody then between, and of course he had a fair show then.

Q. He had a fair way to see there at the time that was called? A. He had a fair show to see there at the time that was called; that is, if he wanted to.

Q. This was the same man you had reported to the Republican County Committee? A. No; I did not report that man to the Republican County Committee; I never reported him.

Q. You swore a minute ago that you did, did you not? A. No; I said things were not running right up there. Butler had got in there, and there were various other things that I didn't like, and for that reason I reported it. I did not report the Republican watcher at all.

Q. You don't know whether he was watching right or not? A. No; I don't know whether he was or not; but I became satisfied on the second night that he was either a coward or a traitor.

Q. Because he did not do as you told him? A. No; I considered he was not doing his duty.

Q. Then you thought because he was not doing his duty as you thought, that he was a coward or a traitor? A. I got it in my mind that the way the ballots were running that there was every chance.

Q. You are a Dr. O'Donnell man, are you not? A. I never said I was; but I am so much a Dr. O'Donnell man that I would give him justice.

Q. In fact, you looked out for his interests? A. No, never.

Q. Didn't you vote for him?

MR. DORN: You are not required to state. A. I will state that I did not vote for him.

By MR. CLUNIE: You swear that this acting Democratic Judge called off three names for Sullivan where Banks' name was on the ticket? Did you swear that? A. I did not swear that. I swear the names were called, but I don't know whether they were there or not.

Q. You know it was a felony to do that, don't you? Didn't you know if an officer of election sat there and called out a name and it was not on the ticket, it was a felony? A. I don't know whether it was on the ticket or not.

Q. You were standing right there, weren't you? A. No; I was such a distance away I couldn't see.

Q. How far were you? A. About five feet.

Q. You could see, couldn't you? A. Not for a good sight. If the ballots were left plain open so anybody could see them, I might see it.

Q. Wasn't the ballot open? A. No, sir; they had their hands in between, reading them off.

Q. Did he have the ballot down this way [indicating]? A. He had it first and the ballot down, and he put his hand across it—so.

Q. In this way [indicating], an open hand held on each side of the ballot? A. Yes, sir; but his hands were in such a position that I couldn't see.

Q. Did you ask him to remove his hand? A. No, I didn't ask him.

Q. Why didn't you do that? A. Because I don't think he would have done it.

Q. And you didn't take the trouble to ask him to do it? A. I believe Mr. Brown—

Q. [Interrupting.] I didn't ask you about Mr. Brown? I asked you what you told this man? A. Those three ballots were counted and strung, and gone.

Q. Don't you know as an officer of election you had the right to look at it? A. No, sir.

Q. Do you swear that as an officer of election, if you thought a ballot had been called wrong, you had no right to look at it? A. I swear I was in doubt about it.

Q. And you didn't attempt to look at it? A. I didn't know I had a right to look at it after it was gone.

Q. Did that occur? A. Something of the kind was running through my mind that I did not know. When I went there I was perfectly ignorant of politics in all ways, I told you.

Q. Yes, you have told us that a dozen times. It occurred to me that you are just a little bit against the Democratic party and always throw dirt on them? A. No: I don't want to throw dirt on them.

Q. This ticket came up, and it was all called out straight down to Banks? A. Yes, sir.

Q. Then Sullivan's name was called? A. Yes: it was called.

Q. He is pretty well up on the ticket, isn't he? A. I couldn't tell you.

Q. Don't you know the relative positions on the ticket? A. No, sir; I couldn't tell you any of them, except I believe Mr. Morrow was near the head of the ticket.

Q. Mr. Morrow was right at the head of the ticket, wasn't he? A. I believe he was, but I couldn't tell you.

Q. Don't you know, as a matter of fact, that the Senator comes right under Mr. Morrow? A. I couldn't tell you.

Q. You never read the ticket? A. I have observed it a number of times, but still I couldn't tell you in what rotation it come out.

Q. The ballot was called, and Mr. Sullivan's name was called, and you were there representing the Republican party? A. Yes, sir.

Q. You don't think it anything strange that Mr. Sullivan's name was called? A. I believe that there were many tickets scratched, and I didn't think it anything strange, until the third one came, and then I thought there was something wrong, and I took the watcher to task about it, and asked him did he notice that, and he said he hadn't seen anything wrong.

Q. He told you he had been looking at the ballots, didn't he? A. Yes; he told me he had kept a close watch.

Q. He had a clean opportunity of seeing it? A. Yes, sir; he had a clean opportunity of seeing it.

Q. And if you had wanted to walk from here around the table: why you could have seen, couldn't you? A. I suppose so; but it didn't strike me at the time.

Q. Don't you know you were just waiting to get something of this kind to testify to? A. No, sir; I didn't; for it is the last thing in the world I want to go into Court.

Q. You swore three times you were there in the interest of the Republican party, and you expected treachery, and you didn't walk around three feet to look at the ballot? A. No, sir; before I had hardly made up my mind the ballot was removed and put on the string.

Q. How long did it take to count off a ballot? A. Some of them in a minute, and they were running through very quick.

Q. They run a ticket off in a minute? A. Well, two or three minutes.

Q. Was it a minute, or two minutes, or three minutes? A. Well, it was run very fast.

Q. Tell me how fast they run a ballot off there? A. It was very rapid.

Q. You wouldn't swear they called a ballot in a minute? A. I don't suppose it was two or three minutes, but it went off very straight.

Q. As a matter of fact, don't you know it took them four or five minutes to count every ballot there? Don't you know that in your heart? A. No; I think there were some of them counted over quicker than that.

Q. How many ballots were cast in that precinct? A. There were two hundred and ninety-six, I believe, out of three hundred and four.

Q. How long were you counting them? A. We were from probably seven o'clock—

Q. [Interrupting.] How many? A. I think there were two hundred and ninety-six in the box.

Q. You started in at seven o'clock at night to count? A. Somewhere about that.

Q. About eight o'clock, maybe. It took you about an hour to get ready? A. Yes, sir; probably we were about an hour getting ready; about eight o'clock, probably.

Q. Eight o'clock election night you commenced to count ballots? How long did you continue to count? When did you finish? A. I don't know. There were two or three little recesses.

Q. Did you adjourn two or three hours at a time? A. Sometimes they would take a recess when the reporters would come and examine the books.

Q. You took no long recesses? A. There was one long recess of about two or three hours.

Q. What did you do during that time? Where did you go at that recess? A. It was my time off when the recess was taken at six o'clock, and I went home; I went home about five o'clock, and I came back.

Q. How do you know there was a recess taken? A. I went home, and I come back again.

Q. What time did you come back? A. I come back when they changed.

Q. You were there when they declared the recess? A. Yes, sir.

Q. Was there a vote taken? A. No, sir; it was a generally understood thing with all hands to take a recess.

Q. Where did that occur—what precinct? A. It was in the Second of the Thirty-third.

Q. That was on what night? A. It was on the last night of the reading.

Q. You took the recess for over two hours, did you? A. I guess there was a recess of something in the neighborhood of two hours.

Q. Was there any objection made by any member of the Board? A. No; no objections by anybody.

Q. It was universally agreed? A. It was universally agreed.

Q. There was no bad Democrat got in and declared a recess, was there? A. No, sir.

Q. You were there at the time? A. Yes, sir.

Q. If any Democratic Inspector got in and declared a recess, you would have objected, wouldn't you? A. I didn't know but it was all right.

Q. You were there and there was no objection? A. No, sir.

Q. And no body questioned it? A. No, sir.

Q. What became of the ballots during that time? A. The ballot box was locked.

Q. Who locked it? A. I believe McPherson told me to lock it and put the key in my pocket.

Q. For two hours you had this key in your pocket, did you? A. I believe the key was in my pocket.

Q. You didn't know what became of that, did you? A. Oh, yes; I knew some portion of the time I had it in my pocket.

Q. You went out of the room, didn't you? A. No, they were in the room pretty much.

Q. Did you go out then? A. No, I was not out then.

Q. Didn't you go out? A. I might have walked to the door.

Q. Didn't you go any further than that? A. No, sir; not outside of the place—not through the recess. I went home about five, and I came back again about six, and about the time of changing at six there was a recess.

Q. And they let you lock the ballot box? A. Yes, they never interfered.

Q. And took the key? A. Yes, sir.

Q. Yet you say they were trying to rob you, a Republican candidate there? A. I don't say they were trying to rob me.

Q. Well, robbing the candidates? A. No, I don't say that they were.

Q. You have not intimated that in your examination pretty strong, have you? A. I couldn't swear that there was anything fraudulent in it.

Q. Don't you know, as a matter of fact, that there was not any fraud in it, and their letting you, a rabid Republican, take the key and carry it around? A. I don't know as there was anybody that has known, as you say, that I was a partisan.

Q. You knew you were a Republican, didn't you? A. Well, they knew that; but they didn't know I was as extreme as you think I am.

Q. And they let you carry that key around there, and you didn't think there was any fraud there? A. There was one standing at the back, and I believe he had his elbow on it, and a man by the name of Hefron come, and he said, "Here, there are two boys around those ballot boxes."

Q. That was the longest recess you took during that time, wasn't it? A. Yes, I believe that was the only recess of any consequence—the only one while I was there, except when the newspaper reporters wanted to get figures.

Q. That didn't take long? A. No.

Q. You finished counting, when? A. I should judge it was in the neighborhood of five o'clock.

Q. You finished when? A. In the neighborhood of five o'clock.

Q. You finished what day? Was that the eighth or the ninth, which? A. It was the eight, I guess; in the neighborhood of the eighth.

Q. If it took all that time for you to count two hundred and ninety-six ballots, how do you account for the statement that one was counted in a minute, or two or three minutes? A. Some of them were run off there very rapidly.

Q. And some of them were not called so rapidly? A. Some of them were not. Sometimes they read off very well, and sometimes they read off very quick.

Q. Will you swear that there was any ballot counted in two or three minutes? A. I wouldn't swear to any such thing.

Q. You swore to that a minute ago, didn't you? A. Well, I suppose there was some of them read off in two or three minutes.

Q. You won't swear what time? A. No; of course I didn't have my watch with me, or time any of them, but it seemed to me very quick.

Q. You were there during the time they were counting the ballots from State Senator down, and you didn't have an opportunity to come around and look at it? A. I suppose I could have.

Q. Nobody asked you to do it? A. No, sir.

Q. You had every opportunity to do it if you wanted to? A. Yes, sir.

Q. After these ballots got on the string, you were very suspicious? You thought something wrong had been done? You didn't ask anybody to look over the ballots? A. No; I didn't think I had a right to do so.

Q. Didn't that occur to you? A. Yes, sir; I wondered in my mind whether I had the right to do so or not.

Q. Are you bashful? A. No, I am not very bashful.

Q. If you thought a felony had been committed, and you thought Banks had been robbed, why didn't you ask somebody to look at the ballot? A. Because it didn't strike me to do so.

Q. That never occurred to you? A. No, sir; it did not occur to me to ask anybody to do so.

Q. Don't you think, as a reasonable man, that the thing would have occurred to you to ask somebody to have looked at them? A. Yes; I do think now it would have been right to have done so; I do.

Q. Do you swear that Mr. Banks' name was on any one of those tickets? A. I can't say that there was any name.

Q. Will you swear that there was a ticket called wrong there? A. No, sir; I cannot. It was only in my own mind.

Q. Then all the testimony you have given us on the stand was your own imagination as to what had been or might have been done? A. I said when everybody was in the room and they were keeping the Republican watcher back, there was an opportunity for anybody to do anything they wanted.

Q. You won't swear that it was done, will you? A. No. I don't know Mr. Banks or know a single man on the ticket. The only men I know in town directly in politics is Mayor Pond and Strother.

Q. You are well acquainted with Strother, ain't you? A. I was in the Election Board there, and I saw some of this kind of business, that I wouldn't be very much flattered to belong to the same party that he was working for. It struck me so that I felt kind of uneasy about the matter.

Q. You were uneasy about Strother, were you? A. Yes, sir; he was on the floor and uneasy, and he said he was afraid it would make him sick, and I was only sorry it didn't make him sick.

Q. You were sorry it didn't make him sick? A. Yes; I wanted to see the thing go along smooth.

Q. Were you interested in this business? A. No, sir; no interest at all.

Q. How did you come here? A. I was asked to come.

Q. Who asked you? A. I don't know who asked me.

Q. Do you swear positively you don't know who asked you? A. I swear positively that I don't know—I might have to give you, I suppose, the whole of it before I can get at it fairly; I told Mr. Dorn when I commenced I am nervous, and it is easy to start me astray, for I am not used to this kind of business.

By MR. DORN: Just stop a minute and calm yourself. A. About a week or ten days ago, McPherson, who lives next door to me, asked me if I would come down; there was a meeting; something about—he didn't state exactly what it was about—but there was a meeting for the Republicans down there, and I didn't know anything about it; but I went down and saw Mr. Smith, and he asked me several questions about it, and I gave him my views; and he said that was all right, and he asked me what time I would be home, and I said most any time from twelve to two I would be home; so he said he would call on me when I was wanted. And I think it was last night two young men came up to my house, me and my wife and the children were at the door, and he said he was going to have a meeting down there again to-night, and Mr. Smith wanted to see me; and

when I went there he asked me would I come here, and what time I should come: so I told him two o'clock.

Q. Where was this meeting? A. It was corner of Dupont and Union.

Q. Who were there? A. I couldn't tell you who were there. Me and McPherson was there.

Q. Who is McPherson? A. McPherson, I believe, is the Republican Judge. I don't know.

Q. Who is this man Smith? A. I don't know; I couldn't tell you who he is.

Q. How do you know his name is Smith? A. Because I heard them call him Smith.

Q. Who did you hear call him Smith? A. Parties there.

Q. You went up to the man you didn't know anything about? A. They told me to come there, and when I got there they introduced me to that man as Mr. Smith.

Q. They introduced you to Mr. Smith, and that was why you knew who he was? A. Yes, sir.

Q. Did't you know before who he was? A. No, sir; and I don't know now who he is.

Q. Didn't they say what they wanted? A. They said there was a little investigation going on about the business up in that precinct.

Q. Smith had set up an investigation, had he? A. I don't know. I was introduced to him, and I don't know Smith, or anything about him, and I couldn't tell you what he was doing.

Q. He heard your statement, did he? A. Yes, sir; he heard a portion of it, but not one twentieth part as much as you have brought out of me.

[Here the witness was temporarily withdrawn, and the further hearing was continued until to-morrow morning at ten o'clock.]

EIGHTH DAY.

SAN FRANCISCO, CALIFORNIA,)
THURSDAY, January 10, 1889—10 o'clock A. M. }

GEORGE HESKETH.

Recalled for further cross interrogatories:

By MR. CLUNIE: You told us fully yesterday, on cross-examination, did you, in reply to my questions, all that was said to you by those people at the polls; one of them hustled you out, as you call it? Answer—Yes, sir; I believe it was full.

Q. Then you testified all that occurred was that this man asked you to get out, and you got out without saying anything; is that it? A. Yes, sir; I kind of thought I had some rights. I said I thought I ought to have some rights, but of course it was decided I was only additional Inspector, and as he was Inspector, he took the place that was there.

Q. The Board acted on it, did they? A. No, I don't know as the Board said anything about it.

Q. Did you appeal to the Board in any way? A. I did not.

Q. How was it decided? A. When he came there and took the place, I always gave the place to him.

Q. You don't call that hustling you out, do you? A. He insisted that it was his right, and that I had no right.

Q. Did he say you had no rights? A. He said I had no right; that while the Inspector was there I had no rights.

Q. You said he said you had no rights. A. He said I was an additional Inspector.

Q. Just tell us what he said. Did he say you had no rights there? A. No, I won't swear that he said I had no rights there; and he said that I was an additional Inspector, and he said that when he was there he would take the position, and he did take it.

Q. You swore yesterday, on cross-examination, that if you had wanted to, you had full opportunity to see these tickets, didn't you? A. No, I don't know that I had.

Q. Didn't you have full opportunity to see them if you wanted to go there behind the man, to see every ticket? A. If I had wanted to go there, I could, I suppose. I suppose if I had went there and made a demand to see them, I could.

Q. Did you have to make a demand? Couldn't you, by going behind the Inspector, see every ticket? A. I suppose I could.

Q. Don't you know you could? A. I believe when the ballots were on file I said I didn't know as I had any right to question them.

Q. I ask you if, as a matter of fact, you had wanted to have gone and seen the tickets, you could not have seen every one of them? A. I believe I could when they were in the man's hands, of course.

Q. What do you mean when you swear to this: "Q. You were not allowed to see the tickets? A. No, sir?" A. How do you mean?

Q. You swore that way when it was not the fact? A. Of course, if I swore that I was not allowed, it should have been that I could not see the tickets from where I was.

Q. [Reading], "You were not allowed to see the tickets? A. No, sir." That is the way you swore. Is that wrong? A. Of course, I suppose it is wrong to that extent. I couldn't see from where I was—only occasionally get a glimpse of them.

Q. If you had wanted to go around the Inspector, you could have seen every one of them, couldn't you? A. I suppose I could.

Q. What do you mean by that? A. I suppose he would have given me the privilege of seeing them.

Q. You were giving a private conversation that occurred at this little interview you had with Captain Smith. When you got before this court of inquiry, what occurred? A. I don't know as there was anything occurred any more than they said there was some trouble up in the precinct, and they wanted to see how it could be arranged.

Q. Who said there was trouble in the precinct? A. They said the precinct was in some trouble, and of course I knew that it was.

Q. Tell me who "they" were. You said, "They said there was some trouble up in the precinct." Tell me who "they" were? A. I think that originally it was Will McPherson that told me, when he asked me to go see them, and that is the first.

Q. Then, when McPherson came to see you, he told you that there was some trouble in that precinct? A. Of course, he told me something was wrong there, and they wanted to have some understanding among themselves.

Q. Now, tell about Captain Smith. What occurred between you and him when you got down to this court of inquiry? A. There was very little said; only, that he might want me in a day or two, and asked me

could I stay home, or where could he find me. I said I was not doing anything, and I could be home most any day from twelve to two; and he wanted me to come and give my evidence.

Q. That was all that occurred? A. That was all that occurred of any importance.

Q. Then, all that occurred between you and Captain Smith, was that he said he wanted you as a witness? A. He probably asked me what I had seen there.

Q. What did he ask you? A. He asked me about the evidence I would give here. He asked me what I had seen.

Q. What did you tell him? A. Partly as to the evidence. Just about as it is, I guess. It may have been altered in the telling of it.

Q. But did you tell him of it as you have given it in your evidence? A. As I have given it here.

Q. Then you left Captain Smith, did you? A. Yes, sir; I don't know that I left him. He asked them up to take a little something at the bar. I believe they took something a couple of times. They asked me what I would take, and I said I would take a little brandy.

Q. I don't care about that. There was then nothing further about the case? A. Nothing further.

Q. And you went home? A. I went home.

Q. When did you go to see Captain Smith again? A. I went to see Captain Smith again, I believe, the night before I was called; I think it was the last night.

Q. What did you want to see him again for? A. Because two men came up and asked me to see him.

Q. To go and see Captain Smith again? A. Yes, sir; to go down there.

Q. They didn't ask you to come out here and testify? A. No, sir; they did not ask me to come out here and testify. They asked me to go down there; that Captain Smith was down and wanted to see me down there.

Q. You went down again? A. Yes, sir; I went down.

Q. And you talked this matter over again, did you? A. Yes, sir; just about the same the second as the first.

Q. You repeated again for fear Captain Smith might forget it? A. It was just about a repetition of the first.

Q. It was not done for fear you might forget anything? A. Oh, no. I couldn't say what Captain Smith thought.

Q. You don't know why you repeated it? A. He merely asked questions, and I don't know that he even made any note of it.

Q. Was he questioning you there the second time? A. He kind of talked a little, and might have asked a question here and there.

Q. He had other people there besides you? A. There were several others.

Q. And he asked them questions? A. I suppose he did.

Q. Then did he ask you about coming out here and testifying? A. He asked me if I could come out here, and I told him I could.

Q. And then you came out here the first day and testified? A. I came out and testified.

Q. You were served with no subpoena? A. No subpoena.

Q. And no fees were paid you? A. No fees.

Q. Then you did not see Captain Smith again until you came into Court? A. No, sir; I didn't see him until I was in Court. I was in Court an hour or two before he came, and then he came in.

Q. Did you then talk to him? A. No, sir; I was sitting alone over there.

Q. From the night you left this court of inquiry the second time until the time you got in Court at Captain Smith's request to come, you hadn't seen him? A. I had not seen him.

Q. You are just as sure of that as of anything else you have testified to? A. Just as I live.

Q. You didn't talk with him down in the Registrar's office? A. I never saw him but three times in my life.

Q. Weren't you down in the Registrar's office, having a consultation with somebody? A. With Captain Smith?

Q. With anybody. A. I might have spoke, but I don't know that Captain Smith was there, or anything about it, for I never was introduced to him in my life. I might have spoken to Captain Smith some time in my life and not known it.

Q. Who did you speak with that day about your testimony? A. I had no consultation in the Registrar's office, or words about it.

Q. You didn't speak about what you were going to testify? A. No, sir; no such matter was before me.

Q. You are just as sure of that as you are of anything you have testified? A. Yes, sir; I am sure that there was not anything talked of what I would give in the testimony.

Q. And you swear now that you, Mr. Banks, and Mr. Dorn did not have a talk down in the Registrar's office, at which you told Mr. Banks and Mr. Dorn about these transactions? A. In the Registrar's office?

Q. Yes, sir; in the Registrar's office. You know where I mean, don't you? A. If I did, I don't know anything about it.

Q. Don't you know where the Registrar's office is? A. I believe it is on the lower floor.

Q. You have been in there several times, haven't you? A. Of course I was in there.

Q. You went in there when you were appointed an officer of election? A. Yes, sir; I went in there to get my papers.

Q. You know where that office is? A. Yes, sir.

Q. You went in there with Senator Banks and Mr. Dorn? Were you down there talking? A. Not to the best of my knowledge. I might have spoken in there, but I never spoke to Mr. Dorn or Mr. Banks. I never knew the gentleman until yesterday. I might have seen him, but I never knew him.

Q. And you never talked in the Registration office? A. I might have, but I didn't know them. I know I saw Mr. Dorn in the Registrar's office before the election took place.

Q. But you didn't talk with Mr. Dorn down in the Registrar's office? A. Not that I am aware of.

Q. Wouldn't you have remembered it, if you had? A. I think I talked with him and Mr. Smith right at the corner, standing, before I came into Court.

Q. But you didn't talk with him down in the Registrar's? A. Not that I am aware of.

Q. Wouldn't you have remembered it if you had talked with him down in the Registrar's office? A. I think I would.

Q. Then you swear positively you did not, do you? A. It is very strange to me. It surprises me if I ever did.

Q. Your memory is not very good, is it? A. Everybody that has ever known me tells me I have a very good memory.

Q. Then you won't swear whether you talked with Mr. Dorn or Mr. Banks down in the Registrar's office, the other day? A. If I was sure I had, I would swear to it.

Q. And yet you won't swear you were down in the Registrar's office, the other day before nine, and talked with them there. That is all.

Redirect Interrogatories.

By MR. DORN: I did ask you what you knew about this case, didn't I? A. Yes, sir.

Q. And you did give me a statement of what you knew, and I did make some notes on this paper, didn't I? A. Yes, sir; at the corner here.

Q. Where did that occur? A. It occurred right at the bend where I come in this room.

Q. It was not down in the Registrar's office? A. No, sir; it was here.

Q. After the Court adjourned a couple of days ago and when several gentlemen and myself went down in the Registrar's office because this Court-room was closed, didn't you go along down there with me? A. No, sir: I was not here several days ago. I never was this way.

Q. Where was it that you told me what you knew about the case when I asked you? A. Right at the corner here, as you turn around to come into this room.

Q. In the corridor? A. In the corridor, yes, sir: at the corner.

Q. And if I went to the Registrar's office during the adjournment of Court a day or two ago with some other gentlemen, you were not one of them? A. No, sir: I was not one of them, for I never was here only day before yesterday and yesterday. I was never in this Court and so how could I have ever seen or talked with you, I don't know.

Q. You said on cross examination that you thought the Republicans ought to have had an equal show up in that precinct. What did you mean by that? A. Well, I am not quite sure that there was such a conversation took place.

Q. You don't understand me then, probably. You told Mr. Clunie that while the votes were being counted there, you didn't think the Republicans were getting a fair show, because Brick Butler was on one side spreading himself out and taking so much space, and you were rather led to say, I think, that there was a Republican on the other side. Was that the case? A. No, sir: it was not the case. There were Democrats all right around the line on the other side.

Q. Tell us how they were located there. Here was the caller in the center [illustrating]. A. Allowing that this reporter's table is where the Clerk sat, and here [showing] was a man reading the ballots, and the Democrats, say, all around that side right up to him. Then Mr. Butler got on the other side where I said that the Republican watcher had a right to be.

Q. And you thought if the Democrats occupied one side, that the Republicans ought at least to have a show on the other side, without looking through Brick Butler? A. That was all I did.

Q. That was what you meant to say? A. Yes, sir: that was what I meant to say.

Q. You were asked something about what the police officer told you, and you said he read some instructions? A. Yes, sir.

Q. As a matter of fact, wasn't that a circular that he read, issued by the Chief of Police, and issued from the office of Chief of Police, by Chief Crowley, informing each Election Board that there were to be duly acce-

dated representatives from the Democratic County Committee and from the Republican County Committee, and instructing the police officers at each precinct to allow the representatives with cards from the two County Committees to have access to the rooms there at all times, and if necessary, and there was no room for anybody else, to put everybody else out, and to keep them in: wasn't that the gist of the circular from the Chief of Police's office? A. The principal portion of it was that he said that he had a right to put them out if there was any disturbance, something to that effect, because at the time there was a little dispute, and the other man was not to go in there and take the place that Butler had, and there was a little dispute there, and he got up and brought a card, and read it off about what has been spoken. But there was nothing in question about it.

Q. You said something about there being a recess one day during the counting of the vote, I believe the last day. By a recess do you mean that you went away from the polling place? A. No, sir; I didn't go away.

Q. Did you go from the polls during the recess? A. No, sir.

Q. Were you out of sight of the ballot box during the recess? A. No, sir, I never was out of sight.

Q. Were the Republican and Democratic Judges in the polling place during the recess, as you call it? A. Yes, sir; I am positive that he was there some portion of the time, I think they took the recess about six until probably half past seven, or seven and eight some time.

Q. By recess you don't mean they quit the business of the Board, but you simply mean that they took a recess? A. They took a recess.

Q. You didn't go away and leave the ballots in charge of anybody but the officers of the Board, did you? A. No, sir.

Q. You didn't walk out of the place? A. No, sir.

Q. You kept charge of it all the time? A. Yes, sir.

Q. And you, as Inspector of the box, say that it was not interfered with in any way? A. Yes, sir.

Q. And you kept the key of the box in your possession? A. Yes, sir; there was a gentleman in the room with me all the time.

Q. You mean simply you took a recess? A. Took a recess; yes, sir.

Q. And quit counting votes for that time, in order to take a recess? A. Yes, sir.

Q. And the only other recess was when the reporters wanted information, or somebody from the Registrar's office, you would stop counting then long enough to give them the information? A. Yes, sir; there were stops, but there were other little stops. It was not brought out in evidence sometimes. They would bring in a little something to drink.

Q. We don't presume they kept counting without stopping to draw breath. What Mr. Clunie meant was if, during the recess, you stopped counting the votes. A little interruption of that kind he didn't refer to.

Recross Examination.

By MR. CLUNIE: Then I understand you that the Board did not take a recess. They just said, "Take a recess," is that it? A. It was an understanding with all hands to stop counting votes.

Q. Wasn't there a recess declared? A. There was nothing declared about it. It was a general understanding that we would stop a little while, and we stopped counting.

Q. And you know, as a matter of fact, that the Republican Judge and yourself were in the room all the time? A. I don't know about the Re-

publican Judge being in all the time, but there was one of the Republican Clerks there, and the Republican Judge might have been there all the time, but I couldn't possibly say.

Q. You think the Republican Clerk and yourself were there all the time, do you? A. I couldn't swear that he was at the box with me, but I know he was there all the time.

Q. Where were the Democratic Clerks? A. They were around.

Q. Were they in the room? A. In the room?

Q. They didn't go out at all? A. Some of them might, and they might not.

Q. Don't you know they were all out of the room? A. No, sir.

Q. Would you be willing to swear they did not all go out of the room? A. Yes: I would be willing to swear they did not all go out of the room.

Q. Who staid in the room? A. I couldn't say; but I think the room was crowded all the time, as previously.

Q. How many people were there sitting around shutting you out? A. I was on the opposite side of the table, on the corner this way [showing], angling, and of course, the way I sat I could not—even if a ballot was laying plain—I could not have seen it fairly from where I was.

Q. Who was sitting around that were keeping you out, and wouldn't get up and give you your place? A. I didn't attempt to go in there where the man was that read the ballots.

Q. Did you ask Brick Butler to get up and let you sit down there? A. No, I did not ask.

Q. You didn't ask the gentleman sitting next to him? A. No, sir.

Q. How do you know they were all Democrats? A. Most of them all had ribbons on, and they showed it in various ways.

Q. What ribbon did they have? A. They had the United States Deputy Marshal's ribbon, and one thing and another.

Q. They were Marshals, sitting around, were they? A. I think it was them that was not Marshals.

Q. Do you swear to that now? You know you are under oath now. A. I know they passed those ribbons around pretty freely whenever one wanted to leave.

Q. You disagreed with Marshal Franks about appointing those people, did you? A. No, sir.

Q. You didn't want him to appoint them, did you? A. No, sir.

Q. You thought he appointed too many? A. No.

Q. You said he passed the ribbons around freely? A. There were so many different ones coming and going all the time you could not keep track of them.

Q. And you wanted Mr. Franks to appoint a sufficient number for you to keep track of them, was that it? A. No; there was a number to be there—two at a time, I think.

Q. And you thought there were too many? A. No; not too many.

Q. Didn't you say there were a great many there? A. To the best of my impression they shot off once in a while through the same shell.

Q. These people sitting around there were all Marshals and had these Marshal's badges on, or else they were members of the Board of Election? A. Yes, sir; they might be.

Q. And you thought it was unfair that they did not get up and let you sit down? A. No; I thought it was unfair they were not allowed the privilege on one side.

Q. And they did not voluntarily get up and ask you to come and sit down? A. No, I did not ask to sit down; but I tried to get Mr. Butler out and to get what was supposed to be the Republican watcher in his place. I tried frequently, and I tried my best to do so.

Q. But you say your reason for saying it was unfair was that these men all stood around there. They were all Democrats and the Republicans were not there. Isn't that what you said in reply to Mr. Dorn? A. It kind of struck me it was not right that the man should sit alongside the one that was calling off.

Q. You didn't ask to sit there? A. No, sir.

Q. Yet they did not voluntarily get up and allow you to sit down? A. No, I was not referring to that.

PAUL BOUGRAND.

A witness on behalf of respondent, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Where do you reside? Answer—No. 115 Jasper Place.

Q. You acted as Clerk in the same precinct—the Second of the Thirty-third, did you not? A. Yes, sir.

Q. Do you know a man by the name of Brick Butler? A. Yes, sir.

Q. Did you see him there at that election? A. Yes, sir.

Q. What did you see him doing? A. I saw him sitting around there most all the time, and the last morning he called off ballots.

Q. About how many ballots? A. I couldn't say. From one to about five, I guess.

Q. Do you know whether he was an officer of the Board? A. No, sir; I do not. I thought he was all the time, being that he was sitting there all the time.

Q. But you are positive that on the last morning he called off some of the ballots, are you? A. Yes, sir.

Q. Can you state how many? A. No, sir; I couldn't state exactly how many.

Q. You heard the testimony of Mr. Hesketh, with regard to the manner in which the ballots were held by the man who called them. Tell us whether the Republicans had a fair show there or not. A. To my knowledge there was one Republican on one side and a Democrat on the other, and there was a Republican sat behind him on another table, but the man that sat behind could not hear very well, and another thing, he was hard of hearing and he could not hear a man, and the way the young man was calling off the ballots, he had his table like that [showing], and it was leaned over that way.

Q. He held the ballots on a board which they used, didn't he? A. Yes, sir; on a sort of slant.

Q. And he put that board down in his lap? A. Yes, sir.

Q. How did he hold his hands? A. He had to hold them that way [showing], to hold the rule.

Q. Did you see him holding his hands on the side of it, so these people could not see it? A. Not to my recollection.

Q. You didn't pay especial attention to that? A. No, sir; I could not.

Q. You were tallying, were you? A. Yes, sir.

Q. You heard the testimony that during the time of the calling Democrats occupied one side of the caller, and Butler occupied the other portion, and he refused to give way? A. He did at one time, but he gave way afterwards.

Q. How long did that last? A. I don't know; but I was busy all the time.

Q. You are positive that he called ballots, then? A. Yes, sir.

Q. How many, did you state? A. From one to five. I cannot exactly remember.

Q. Why did he quit calling them? A. The other Clerk came in.

Cross Interrogatories.

By MR. CLUNIE: Where do you reside? A. No. 115 Jasper Place.

Q. How long have you lived there? A. I have lived there just one week to-day.

Q. Where did you live before that? A. No. 12 Virginia Place.

Q. How long have you lived there? A. Two years.

Q. Where did you live before that? A. I lived at No. 338 Vallejo Street—some number like that—between Powell and Mason Streets.

Q. How long did you live there? A. I lived there about two years.

Q. Where did you live before that? A. Scott Place, No. 21.

Q. Whereabouts is that? A. That is between Broadway and Pacific, and Powell and Mason Streets.

Q. How long did you live there? A. I lived in Scott Place about a year and some months.

Q. You lived with your father prior to that? A. Yes, sir.

Q. Were you a member of this Board of Election in that precinct? A. I was up there as a watcher.

Q. And you watched the tallying, did you? A. I did for about half an hour, and they put me in Mr. Galleano's place as Tallier.

Q. Who put you there? A. One of the County Committeemen—I believe he was the County Committeeman—Mr. Jones.

Q. Did he do that himself, without a vote of the Board? A. I believe so. They were all willing; nobody made any dispute.

Q. They didn't vote on it? A. No, sir; they saw Mr. Galleano could not very well hear the name, and it took him a very long time to tally out one or two names, or hunt up the name, and finally they asked me.

Q. Who asked you? A. Mr. Jones.

Q. Mr. Jones displaced Galleano and put you in his place? A. Yes, sir.

Q. Mr. Jones is a member of the Republican County Committee? A. And he put Galleano in my place.

Q. As watcher? A. Yes, sir.

Q. He did that, did he? A. Yes, sir.

Q. You were there most of the time, weren't you? A. No, sir; I would go on at twelve and go off at six in the morning.

Q. Was Mr. Hesketh on with you? A. Yes, sir.

Q. Did you notice up there any time any of the Democratic members of the Board take any advantage of anybody? A. I never saw him take any advantage.

Q. Did you see anybody take any advantage of Mr. Hesketh? A. They would laugh at him, and one thing and another.

Q. Did you laugh at him? A. Of course; we all had to laugh. We couldn't help ourselves.

Q. Did you call him a crank? A. I didn't hear them call him a crank.

Q. If they had called him a crank, you could have heard it? A. Of course I could.

Q. Then he was mistaken when he said they called him a crank? A. I don't think they did.

Q. It could not be possible they called him a crank and they laughed at him, could it? A. They just laughed.

Q. If you were there taking down the tally, at any time did you observe anything on the part of the Democratic members of the Board of Election that was wrong or improper? A. Not that I could see.

Q. You were there all the time? A. I was on my watch.

Q. And you were there for the Republican Committee? A. I was.

Q. And if anything had been wrong you would have tried to have seen it? A. Yes, sir; certainly.

Q. From the time you were there everything was conducted fair and square? A. As far as I could see. I know my tallying corresponded.

Q. With the other Clerk? A. Yes, sir.

Q. And there was no trouble? A. No, sir.

Q. On his part either? A. No, sir.

Q. Did you notice anything wrong? A. Not that I could see.

BENJAMIN GALLEANO.

A witness on behalf of respondent, was duly sworn, and testified as follows:

Direct Interrogatories:

By MR. DORN: Mr. Galleano, where do you reside? A. No. 21 Valparaiso Street.

Q. You are the Clerk who was displaced, and Mr. Bougrand put into your place? A. Yes, sir.

Q. What did you do after that? A. I was behind, and I was in his place.

Q. Do you know a man by the name of Brick Butler? A. I do.

Q. Did you see him at the last day of the calling in that precinct? A. Yes, sir.

Q. Did he call any ballots? A. Well, he did.

Q. About how many? A. Now, I couldn't say.

Q. You can't say how many? A. No, sir.

Q. Are you positive that he called any? A. Yes, sir; he may have called one or more. I don't know because I thought that he was one of the officers of the Board and paid no more attention.

Q. Do you know whether he was an officer of the Board? A. No, sir; I do not. In fact, I did not know the officers except one Republican Judge and another—

Q. Were you present on the last morning when they stopped counting votes for a while? A. Yes, sir.

Q. Was the Democratic Inspector there? A. I don't know who the Democratic Inspector was—yes, I think I do, but I don't believe he was there.

Q. Was the Democratic Judge there, or either of the Democratic Judges? A. The Republican Judge was there, I know.

Q. How about the Democratic Judge? A. I don't know.

Q. Was there ever a time during the whole count when all of the Demo-

cratic officers went away and left the Republicans in charge of it? A. Oh, no. I think they were there, just the same as we were.

Q. On this morning that they stopped counting, did the officers of election go away or did they just simply stop counting and take a rest? Which was it? A. After the count they took a rest, and then we said to fix the books—ballot books.

Q. This rest was after the ballots had been counted, was it? A. Yes, sir.

Q. After all the ballots had been counted? A. Sure.

Q. Are you positive about that? A. Now I come to think, there was a rest before the ballots were counted, so they would not get through, because they said we would not get out to the City Hall before such a time.

Q. Did the officers of election go away and leave the place and desert it, or did they stay there and take care of the ballots and remain in charge of the room? A. Yes, sir.

Q. All the time? A. To the best of my knowledge they did.

Cross Examination.

By MR. CLUNIE: You ain't sure about what the officers of election said at the time this adjournment occurred? A. No, sir; I am not.

Q. You know you were there? A. Yes, sir.

Q. And you know Mr. Hesketh was there? A. No.

Q. Do you know Mr. Jones, or do you know Mr. Brown? Was Mr. Brown there? A. Mr. Brown, I believe, went away in the morning after they were all through with the count.

Q. You are not sure whether the Democratic men went away or not, are you? A. There were some there.

Q. But you don't know how many? A. No.

Q. Did you see any of the Democrats there abuse Mr. Hesketh? A. No, sir.

Q. Did you see anybody there attempt to deprive Mr. Hesketh of any of his rights as a member of the Board? A. No, sir. The only question I saw there was between that gentleman writing there—they had an argument once in a while—once in a while it would happen. He insisted that Mr. Hesketh was an Assistant Inspector, and Mr. Hesketh insisted he was Inspector; and they wouldn't have it that way, so I didn't know which was which.

Q. Mr. Hesketh labored under the impression that he was the Inspector? A. Yes, sir.

Q. And that was the dispute that was going on? A. Yes, sir.

Q. And you were there all the time, were you? A. Yes, sir.

Q. And you were a member of the Board? A. Yes, sir; I was a member of the Board.

Q. Did that Board do anything improper that you know of? A. Not as I know of.

Q. And they tried to do everything fair, as far as you saw? A. Yes, sir.

Q. They didn't try to deprive Mr. Banks of any votes, did they? A. No, sir.

Q. Or to give any benefit to Mr. Sullivan? A. No, sir.

MR. DORN: Will you admit that James Butler, alias Brick Butler, referred to in the testimony of the last three witnesses, was not a member of the Election Board on the day of election, having been removed on the last day of precinct registration, which was some fifteen or twenty days prior to the holding of the general election?

MR. CLUNIE: Will you admit that Mr. Butler was a member of the Precinct Board of Election two years ago, and appointed by Mr. Smiley?

MR. DORN: That I do not know.

MR. CLUNIE: Then I will ask the question of Mr. Jacobs, the Deputy Registrar, when he comes.

LOUIS N. JACOBS.

A witness on behalf of respondent, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Mr. Jacobs, what position, if any, do you hold? A. Deputy Registrar.

Q. Where were you at the time of the contest of election for Mayor was being tried? A. Where was I employed at that time?

Q. Yes, sir. A. In the County Clerk's office; Clerk of Department Ten. Q. At the time the Twenty-first Senatorial District was being canvassed in Judge Finn's Court, in the contest over the office of Mayor between O'Donnell and Mayor Pond, did you take off any tally? A. One precinct.

Q. What were your opportunities for taking off a correct tally? A. I sat right at the head, where the ticket was placed on the needle.

Q. And where you could see the ballots as they came out? A. Not as they came out but as they were being strung.

Q. Were you able to see them well enough to take off an accurate tally? A. I wouldn't call it an accurate tally, no. One that would satisfy my own mind in the counting.

Q. What tally, if any, did you take off? A. Mr. Banks and Mr. Sullivan.

Q. What precinct was that? A. The Second of the Thirty-third.

Q. You took a tally of the Second Precinct of the Thirty-third Assembly District. How did you happen to take that tally off? A. Mr. Williams was in the room and was sitting in a chair in front of the table, and some parties came in—

Q. [Interrupting.] I don't care about that. Was the reason why the tally was taken off that it was the opinion of people who had observed things that the count was wrong? A. I don't know what the reason was. I merely relieved Mr. Williams to go see some parties, and I took that tally of that one precinct.

Q. What was the result of that tally? A. Do you mean what were my figures?

Q. Yes, sir. A. Mr. Banks one hundred and twenty-two and Sullivan one hundred and sixty-six.

Q. What was the official figure there? A. If I recollect right, I think after looking at the record, it was eighty-six and one hundred and ninety something. I don't remember what they were.

Q. Can you state whether Mr. Banks gained or lost by the actual ballots as you tallied them from the official tally? A. I should judge he gained.

Q. What was it he gained? A. The difference between eighty-six and one hundred and twenty-two—that is, thirty-six votes.

Q. Did Mr. Sullivan gain any? A. Mr. Sullivan lost, I think, in the neighborhood of thirty votes.

Q. That is the total change in the vote for Senator in the Twenty-first Senatorial District, the Second Precinct of the Thirty-third Assembly District, which Mr. Banks should have received, or sixty or sixty-odd more than the amount which was given him by the official tally? A. Not that he should have received. It would have made the difference. In loss and gain it would have been sixty-odd.

Q. By the official tally, as it now appears, Banks has a deficiency of sixty-odd votes? A. I should judge so.

Q. And had the votes been accurately and honestly tallied and counted for Senator in that district, Mr. Banks would now have some sixty-odd more votes than he has now, according to your tally? A. According to my tally.

Q. You say your tally could not be absolutely accurate. About how far do you say it might vary from the fact? A. I couldn't say anything in regard to that. The ballots taken later made the difference some five or six votes, and I might possibly be in error or they might be in error.

Q. Was your tally ten out of the way from this? A. I don't think they were.

Q. Would you swear that it was not as many as ten? There could not have been as many as ten mistakes in your tally? A. No; I won't swear to that; but I don't think they were five out of the way. I might be mistaken, from the fact that at the beginning I relied upon their being called off, and possibly they have been called off wrong; but I found after the first eight or ten votes I could take it off more accurately and surely by looking at the ballots myself. In the first eight or ten ballots, I relied upon the caller.

Q. Then it is possible you tallied right by some of it, and the mistakes were trifling? A. I don't think they exceeded five.

Q. Then, if it has been claimed here and been testified to, that the ballots were correctly and honestly counted in that precinct for the office of Senator, whoever testified that is mistaken? A. I should judge that.

Q. What is that? A. Do you mean to say if they testified that way they are mistaken?

Q. Yes, sir. A. I think they are; yes, sir.

Q. Then, from your observation of those ballots, would you be able to say that Mr. Banks did get a fair, honest count of the votes that he was entitled to in that precinct? A. I don't know what the condition of the ballots were or anything of the kind; I only testify from my own observation.

Q. From your observation, then, and having counted and tallied the votes as they were gone over in Judge Finn's Court, you are able to say that Mr. Banks did not get his full vote there? A. I should judge not.

Q. And that he was either mistakenly or fraudulently deprived of some sixty votes that he was entitled to? A. I should judge that.

Cross Interrogatories.

By MR. CLUNIE: You don't swear that your tally was within ten of right there, do you? A. Not positively. I swore I don't think it could have been that many out of the way.

Q. Don't you know it was impossible to get a correct tally in Judge Finn's Court? A. Yes, sir; I think so.

Q. Didn't you state so repeatedly, that it was impossible? A. That it was impossible to get a correct one.

- Q. You were near Mr. Dunn, and he was Bailiff of the Court, wasn't he? A. Yes, sir.
- Q. Did you so tell him? A. I don't think I did speak to Mr. Dunn.
- Q. Will you swear you didn't speak to Mr. Dunn? A. Yes, sir; I will swear I didn't speak to Mr. Dunn of the correctness or incorrectness of the tally.
- Q. And there was another gentleman sitting right by Mr. Dunn? A. No, sir.
- Q. Don't you know Mr. Connolly? A. I don't know the man.
- Q. Were there any gentlemen sitting there together? A. There were ten or fifteen sitting around there.
- Q. Did you tell him afterwards it was impossible to get an accurate ballot? A. I say it is possible that I made that remark, that it was impossible to get an accurate ballot; but I didn't say it to Mr. Dunn.
- Q. What caused you to make that remark? A. I don't know.
- Q. You told it? A. I told it at the time.
- Q. You are rather in favor of Mr. Banks here, are you not? A. Yes, sir.
- Q. You are a politician? A. I don't pretend to that.
- Q. You have held office under the Republicans a great many years, haven't you? A. Three years and a half.
- Q. And you are holding office in the Registrar's office now? A. Yes, sir.
- Q. And you won't swear that these ballots are in the same condition that they were on the day after the election, will you? A. Certainly not.
- Q. In whose possession have they been? A. I presume they have been in the possession of the Registrar.
- Q. He is the man that Governor Waterman removed. A. I don't know whether he was removed or not.
- Q. You swear that? A. I don't know whether he was removed or not.
- Q. You swear that? A. I don't know whether he was removed or resigned.
- Q. You have seen Mr. Smiley's commission, haven't you? A. Yes, sir.
- Q. And it don't appear in there that Mr. Prindle was removed or not? A. I didn't read it.
- Q. You haven't seen it? A. I stated I have seen it, but I didn't read it.
- Q. You have made the entry of it in your minutes, haven't you? A. Not yet. I have rough minutes.
- Q. You have rough minutes? A. I have rough minutes.
- Q. Haven't you an entry in there that Mr. Smiley was appointed and Prindle resigned? A. I said that Mr. Smiley presented his commission to the Board of Election Commissioners.
- Q. Where are your minutes? A. They are downstairs. It said that Mr. Smiley presented his commission to the Board of Election Commissioners, and it was ordered spread upon the minutes.
- Q. It don't say anything about Mr. Prindle? A. I don't know.
- Q. It didn't say that as Mr. Prindle resigned or was removed? A. It was not necessary.
- Q. It don't appear in your minutes? A. I haven't written up my minutes yet, I say.
- Q. And that don't appear in any place on your minutes about Mr. Prindle? A. No, sir.
- Q. And it won't appear? A. No, sir.
- Q. Haven't you made up your minutes? A. They are rough minutes.
- Q. Do you write up rough minutes at the Board? A. Yes, sir; I do at the Board.

Q. Aren't the rough minutes the regular minutes? A. Rough minutes don't constitute full minutes.

Q. When did that occur? A. Day before yesterday.

Q. And you are relying on your memory? A. My memorandums will show what that ought to be.

Q. You said you went in there at the request of Mr. Williams. Who is Mr. Williams? A. Ed. Williams.

Q. He is a Republican, isn't he? A. Yes, sir.

Q. Didn't he tell you he was taking the tally for Mr. Banks? A. No, sir; I saw it.

Q. Didn't you know who he was in there for? A. No, sir, I did not. I took it for granted he was taking it for Mr. Banks.

Q. You don't think he was taking it for Mr. Sullivan, do you? A. I would just as lief take it for Mr. Sullivan as Mr. Banks. I was taking it for both of them, I tell you.

Q. Then you were in a little doubt who you were taking it for? A. No, sir; there was no doubt about it who I was taking it for.

Q. And you knew Mr. Banks wanted to get every vote he could, didn't you? A. No, sir.

Q. You knew he had a contest, didn't you? A. Yes, sir.

Q. And you knew there was a contest, didn't you? A. Yes, sir.

Q. And you knew he wanted every vote he could get? A. No, sir; I didn't know it.

Q. You knew there were other people there taking tallies? A. I knew Mr. Maxwell was there also.

Q. Wasn't there a great many snap tallies being taken around? A. I didn't notice anybody taking any tally except Maxwell and myself.

Q. You sat right by Mr. Dunn? A. Yes, sir; I sat at the left hand side.

Q. You had an ample opportunity to see everything? A. What do you mean by that?

Q. Every ballot that came out? A. Yes, sir.

Q. How did you get it? A. I relied on Mr. Dunn's calling them at the start, and I found I couldn't understand him very distinctly, and I found by looking at the ballots I could get them more accurately.

Q. And any mistakes you made, you only made them on the first day of taking the tally? A. No, sir.

Q. How could you have made a mistake? A. I might have put down Banks for Sullivan or Sullivan for Banks in a hurry. I don't claim I did it accurate.

Q. Didn't he take them off pretty fast? A. Just about as fast as that [showing]; he took time to look at it himself.

Q. He called off each one of them? A. Yes, sir; he called off each one.

Q. All the way through? A. Yes, sir; I couldn't understand half the time what he called.

Q. Did he call both names off? A. He started off on the proposition of calling both names.

Q. Did he call it all the way through? A. Yes, sir.

Q. Did he call it correct? A. I don't know; I didn't pay any attention.

Q. If Mr. Dunn says it was impossible to take a snap tally and get any where near correct, he is wrong, is he? A. I don't know that he is wrong.

Q. If Maxwell says it was impossible to take a snap tally, and get any where near correct, he is wrong, is he? A. I don't say that, either; I haven't said it was accurate.

Q. You said there was not a variation of more than ten? A. I don't call that an accurate tally; if I did, I would call it a tally without a mistake.

Q. These ballots were facing you? A. No, sir; right from me.

Q. It was done this way [showing]? A. Yes, sir.

Q. It was facing right toward you? A. No, sir; it was not.

Q. How was it? A. If that was the ballot [showing], I would be here in a position this way [indicating], to see the name: I would sit there and take the name. I was on the left hand of the ballot, the head of the ticket was at what would be my left hand, and I could see all those names. Mr. Maxwell was sitting here [indicating] and looked the length of it.

Q. He had a better chance than you had, didn't he? A. I don't know whether he had or not. You can judge for yourself. I thought I could see better, because I was on the line of the name, where he had to follow up the line of the names to find it.

Q. And you thought your position was better? A. I thought so; yes, sir.

Q. Did you swear your tally was correct within ten? A. I told you I wouldn't swear positively.

Q. Do you swear it is within twenty? A. Yes, sir; I would swear it was within twenty of right.

Q. You will swear positively? A. Yes, sir.

Q. That your tally was within twenty of right? A. Yes, sir.

Q. Was it within fifteen? A. I wouldn't designate any number beyond that.

Q. Why do you think it comes within twenty? A. Because I don't think I made twenty mistakes.

Q. Why? A. Because I don't think it would be possible.

Q. Why? A. I couldn't tell you why. You asked me to swear to a positive figure, and I swear I don't think I made twenty mistakes.

Q. Why wouldn't it be twenty? A. Because I saw those names, and I don't think it was possible to put them down without seeing them.

Q. And you swear you made twenty mistakes? A. I don't swear I made twenty mistakes.

Q. But you will swear that it was twenty? A. You are putting words in my mouth.

Q. Will you swear your count was not in front of your eyes? A. I said I thought I could swear that with safety.

Q. Well, you didn't. A. I say so now. Then you asked me if I could swear positively that I did not make twenty mistakes, and I swear I think so.

Q. You don't swear positively to it? A. You were asking me to swear positively that there were no mistakes, and it was impossible. I am stating now that I do not believe that. You are asking me to swear to a positive proposition, and I can't do it.

Q. And you decline to swear positively how many mistakes were made? A. I won't state when I don't know.

Q. Didn't it occur frequently that Mr. Dunn would put three or four ballots on a string at once? A. No; I don't think he did.

Q. Will you swear to it? A. I won't swear to it, but he might have done it and I not noticed it. I only saw the ballots as they faced up, and if he put two or three there, I didn't see it.

Q. If he did that, all you saw was the top of the ballot? A. If he did that, I can't swear to it.

Q. If Mr. Dunn did that, you only took the top? A. I didn't see him put two or three ballots.

Q. If he did do it, independent of your seeing it, then you only took the top of the ballot? A. If he did it, then I certainly couldn't have seen underneath.

Q. Now, just turn to your minutes of the Board of Election Commissioners, and see when Brick Butler was removed — the last day of precinct registration. A. October nineteenth.

Q. Does it say anything about Brick Butler there? Just read it. A. [Reading.] "A communication from Thomas J. Smiley, Chairman of the Republican County Committee, received, asking that James J. Butler, Inspector of Precinct Registration in the Second of the Thirty-third, be removed. By unanimous consent, the Secretary of the Democratic County Committee was directed to substitute another man in his place."

Q. Is that all that appears? A. That is all.

Q. Are there no remarks by Mr. Strother there — no motion made by him? A. Not on that date; no, sir; that was the only motion made.

Q. Was there anything said there by Mr. Strother, as the records show, about Butler having been a Republican Inspector two years before? Does that appear anywhere in those minutes? A. Under the date of October twenty-second, I find the following: "Commissioner Strother moved to amend the minutes of the last meeting in relation to that clause referring to James Butler so as to read, 'That said James Butler acted as a Republican Judge in the election of 1886, both in the Precinct Registration Board and upon the Election Board.'"

Q. That was adopted, was it? A. It don't say whether it was adopted or not. That is all the minutes.

Q. There is a resolution preceding that, is there not? A. It don't say on those minutes whether the resolution was adopted or not.

Q. Who was the Clerk of the Board? A. It is signed, "Benjamin A. Prindle, Registrar of Voters."

Q. Wasn't it Fred Fowler? A. Fred Fowler occupied the position of Deputy Registrar.

Q. He was a Republican, wasn't he? A. He is so called.

Q. And it don't appear what action of the Board was taken? A. That is all. If there is anything in this, I have not been able to find it.

Q. That was proposed by Strother as an amendment to the previous minutes, wasn't it? A. I don't know what the understanding was. I will read it again to you. [Reading.] "Commissioner Strother moved to amend the minutes of the last meeting in relation to that clause referring to James Butler so as to read, 'That said James Butler acted as a Republican Judge in the election of 1886, both in the Precinct Registration Board and upon the Election Board.'"

There was no action taken upon the motion. It is a motion.

Q. There was no action taken? A. The minutes show none.

Redirect Interrogatories.

By MR. DORN: Are you the only person that was taking off the tally in this precinct in behalf of Mr. Banks? A. No, sir.

Q. Who else took off a tally? A. Ray Falk.

Q. Where was Ray Falk situated relative to the ballots? You described Mr. Maxwell as being here and you here [illustrating], and where was Ray Falk? A. Ray Falk was behind the gentleman that was calling the ballots off.

Q. That is a better position to see the ballots from than at the stringer, isn't it? A. I couldn't say whether it is better or not. I didn't occupy it.

Q. Did you compare your tally of the vote in this precinct on the Senatorial vote with Mr. Falk? A. Yes, sir.

Q. How did they come out? A. They came out within two votes.

Q. Did you compare with Maxwell? A. No, sir, I did not. I don't think Maxwell and I spoke about it.

Q. You were asked something about the question whether Dunn, the Bailiff, strung two or three votes at one time, and you took the check of the one. As a matter of fact, Dunn was assisting Maxwell to take off the tally, and spreading out the votes especially for his benefit, and calling the name for him, wasn't he? A. I don't know. When I came in there I hadn't taken any tallies there, and I merely relieved Mr. Williams, as I said before, and I was informed that Dunn would call off both Banks' and Sullivan's name, and I didn't know that Maxwell was keeping the tally, and at first I tallied both votes. As soon as that precinct was over I got up and Williams came back.

Q. As a matter of fact, the Bailiff there was assisting yourself and Maxwell to take off those tallies? A. I so understood it.

Q. And he didn't string two ballots at a time? A. I didn't see any.

Q. In case he had strung two ballots, when you came to add up your totals, was there a deficiency in the vote such as would be indicative of having strung a number of ballots at one time and you not having counted them for the candidate? A. My recollection is that my vote compared exactly, but I don't know whether it is my vote or Falk's vote that was twenty-six short of the total vote that was cast in the precinct; I mean of the official vote—eighty-six and one hundred and ninety.

Q. As a matter of fact, the official vote showed the Senatorial vote to be short of the total vote, didn't it? A. Yes, sir. I don't remember the amount.

Q. Then, your tally showed the same shortage in the Senatorial vote that the official tally showed. A. In the same proportion.

Q. It is a very common thing, isn't it, to take any office in the precinct, and find that the votes for the two candidates don't come up to the head of the ticket? A. There are frequent cases of that kind.

Q. Isn't it a very common thing that the total electoral vote will be larger than any other vote for any particular office you happen to pick out? A. I have seen the thing very often.

Q. They scratch the electoral vote less than any other person on the ticket, don't they? A. Generally, sir.

Recross Interrogatories

By MR. CLUNIE: You have noticed that frequently, haven't you? A. Not frequently, but I have noticed it.

Q. Whereabouts? A. I have noticed it in my precinct.

Q. Where did you notice it? A. I noticed it in the Salomon-Maloney fight, and there was quite a discrepancy.

Q. You have noticed it in the district before, haven't you? A. I know an instance of it here two years ago.

Q. What was that? A. That was in the O'Connor and Le Blanc fight.

Q. That was all in the Forty-second District? A. Yes, sir.

Q. You have not noticed all around town? A. I have not noticed particularly.

Q. You have not noticed out in the Twenty-first? A. No, sir.

Q. You know that out in the Forty-second District, a great many people scratch and don't vote for Assembly? A. No, sir; I don't know that either.

Q. You know it is done? A. You have asked me to give cases, and I stated those that I knew. I don't know that it is a general rule.

Q. You said it was a general thing? A. You asked me if I had noticed it before, and I said yes.

Q. You said it was a general thing? A. No, sir; I did not say that.

Q. Then all your observation has been in the Forty-Second District? A. Particularly; yes, sir.

Q. That must have been because people refused to vote? A. I don't know.

Q. That is because the people scratch the Senator, and don't vote at all, though? A. I don't know.

Q. Is that the way it can occur? A. I don't know.

Q. How could it be done, then? A. I suppose it might be done by omitting the writing of the name.

Q. Admitting that everything is proper and there is a shortage in the vote, the only way that could have occurred would be by the name being scratched off, wouldn't it? A. I should judge so; yes sir.

MILTON CONLEY.

A witness on behalf of the respondent, was called, sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Mr. Conley, what part, if any, did you take in the last election? A. I did not take any.

Q. Do you know the Second Precinct of the Thirty-fourth Assembly District? A. Yes, sir.

Q. Were you there during the election? A. Yes, sir.

Q. How did you happen to go there? A. I generally vote in that precinct for eight or ten years, and I passed there after twelve o'clock, after I left my place of business.

Q. Well? A. I was met on the street by Mr. Callahan—in the middle of the street; he come out. He was standing over there.

Q. Who is Mr. Callahan? A. He is a young man that lives down on the beach there.

Q. Go on and tell us about it. A. He come across and met me in the middle of the street, and said, "Do you vote here?" I said, "I don't know whether I do or not." They had just changed the polls from Lilkendey's, so he went over and looked at the books, the Register. He said, "You don't vote here; your name ain't here." I said, "All right," and I walked away. In a few minutes I came back to the corner of the street and there was a little jangle about something. It appeared to be a laboring man; he wanted to vote, and he had some papers in his hand. This man come up and spoke to me about the papers, and I asked him to look at his papers. When I took his papers to look at them, there was some one else, a fellow they call "Old Man"—I don't know his name—he come up to me and said, "What right have you to look at those papers. Are you an officer?" I said, "No, but I have got the right to look at them if I choose," so I left the place and didn't stop there any longer. I got on the cars and went up to the Committee Room, and when I was there, I met some one I had seen, but was not personally acquainted with him, and he told me to go back down there, and gave me some papers.

Q. He gave you a card from the County Committee? A. Yes; to go down there.

Q. What instructions, if any, did he give you? What did he tell you to go down there to do? A. None at all. Just to go down and look after things.

Q. When you got down there, what reception did you get? A. I got a grand reception.

Q. Describe what occurred. A. I went in, and I sat down by Mr. Hawkins. He was taking the tickets from the window. I hadn't sat there more than a second or so, as near as I can remember—

Q. [Interrupting.] Did you show your card when you went in? A. I don't remember whether I did or not.

Q. Did you show it afterwards? A. I did.

Q. Go on. A. I sat there a few minutes, and Mr. Coleman came to me—

Q. [Interrupting.] Who is Mr. Coleman? A. He is a boatman, I think, that lives over Mr. Hawkins.

Q. What had he to do with this election? A. I don't know; I don't know that any.

Q. What are his politics? A. I can't say for certain, but I think he is a Democrat.

Q. He was a Democratic officer of election there, wasn't he? A. Probably he was. He had a good deal to say there. I don't know whether he was an officer or not.

Q. What did he do? A. He came to me and said, "You Grand Army ———, what are doing here?" He said, you ———, ———, if you have got that cane, I don't care for you." I didn't resent it. Of course, I got up and walked away from him. I walked toward the door where I came in. He got after me, and demanded to see my authority for being in there. I took out this card [indicating], and there was a policeman sitting there writing—a young policeman; not the one that was in front, but a stranger to me. I said, "I will not show you this card; I will let the officer look at it," and I handed it to the officer, and the officer said that was all right. That was the last said. I spoke a couple of words there, and walked away.

Q. Just tell how the counting of votes was conducted there. A. I had no time to see.

Q. How do you mean, you had no time to see? A. I didn't stop. I wasn't there more than two or three minutes. I thought there was too many there for me, and I got out of the place very quick. I knew the crowd; I know the boys, so I knew it was best for me to take a walk.

Cross Interrogatories.

By MR. CLUNIE: How did you come to come here? A. I was subpoenaed.

Q. Who subpoenaed you? A. I was subpoenaed, I think, by Mr. Collins.

Q. Who is Collins? Is he a friend of yours? A. No, sir; only an acquaintance.

Q. You know him very well, don't you? A. I only have seen him a few times in the place of business where I am.

Q. Where are you in business? A. Clay and Powell.

Q. What business? A. Saloon business.

Q. How long have you been there? A. Three years and a half.

Q. You are a Republican, are you? A. Yes, sir; I am.

Q. You had an application in to have the polls in your place, didn't you? A. No, sir; I never was there.

- Q. You never asked anybody to get it? A. No, sir.
- Q. You don't know that now? A. I don't know anything about it.
- Q. You didn't want them to come in your place at all? A. Why should I? I am working for another man.
- Q. Didn't he want to get it in? A. Not that I know.
- Q. You didn't make any endeavors to get it there? A. No, sir.
- Q. What induced you to come out here? Somebody called you a ———
———, and you wanted to come out here and tell it? A. Acting for Mr. Banks.
- Q. Did Mr. Collins ask you to come here? A. No, sir.
- Q. Did you tell Mr. Collins you knew about this? A. No, sir; Mr. Hawkins told me.
- Q. What does Mr. Hawkins do? A. He has got a house there and property. He was the one I spoke to inside, that was taking the tickets.
- Q. He was the man you went to watch; is that it? A. Oh, no.
- Q. You didn't want to watch him? A. I didn't want to watch anybody.
- Q. What did you want to go up there for; just for fun? A. I went up there because I had an interest.
- Q. You went up there to take charge? A. No, sir; I did not take charge.
- Q. Didn't the Republican party tell you to go up there and take charge of the whole business? A. They told me to go up and look at it.
- Q. And you went inside where they were taking tickets at the ballot box? A. I didn't go to the ballot box.
- Q. You went in the room? A. Yes, sir.
- Q. And started to take charge? A. No, sir; I never said a word.
- Q. Those were your orders, to go and take charge? A. Yes, sir; but I didn't take charge, for I didn't say a word, and I didn't attempt to do it.
- Q. When the Republicans told you to take charge of the precinct, you went up to do it? A. No, sir. I didn't want charge of that place. I was glad to get out of there.
- Q. Your object in going in was to take charge? That was it, wasn't it? A. Not particularly. My object was to go there and kind of look around at the business.
- Q. You were not an officer of election, were you? A. I know I was not.
- Q. Didn't you know you had no right to appear at this election? A. No, sir; I did not.
- Q. Don't you know that they don't allow anybody but the officers themselves to go in there? A. I don't know, only Mr. Dimond gave me this card and told me to go in.
- Q. And you thought Mr. Dimond had a right to set aside the election laws and give you a card to go anywhere you wanted to? A. I didn't know anything about it.
- Q. Don't you know, as a matter of fact, that the officers of election are the only ones that had a right to go in there during the time the election was going on? A. I didn't know anything about it.
- Q. Did you see anybody else there besides the officers of election? A. Yes, sir; I did.
- Q. Who did you see? A. I see the man that owns the saloon.
- Q. He was in there getting orders for drinks? A. I don't know that.
- Q. Didn't you know, as a matter of fact, that he was? A. I don't know what he was there for.
- Q. That was the only person you saw in there? A. No; I don't recollect seeing any one only just this one.

Q. And you went in and sat down in there? You went up to the Inspector, didn't you? A. No, sir.

Q. You went up to where Mr. Hawkins was taking the votes? A. Yes, sir.

Q. That was right up where people were voting, wasn't it? A. Back about ten or fifteen feet, probably, from where he was sitting. That is about as near as I got to the window. I just spoke to him two words; I said, "How do you do, Mr. Hawkins?" and about two words, and then Mr. Coleman he came up and talked that way.

Q. Come up and what? A. Called me these names; abused me.

Q. What is that? A. I say Mr. Coleman came up, and just as I spoke to Mr. Hawkins called me a ———, a ———, and I can't remember all.

Q. You have told us that four or five times. This is not a title to the Grand Army. Were you going around as a Grand Army man? A. No, sir.

Q. Why did he say that? A. He knows me to be one; that is it.

Q. To be a Grand Army man, you mean? A. Yes, sir.

Q. Who was Mr. Coleman? A. Mr. Coleman is a man that appears to me to be a runner for some boarding house—sailor boarding house.

Q. And he didn't ask you what you were doing in there? A. I think he did not.

Q. Do you swear he did not? A. He said the words I mentioned, "What are you doing here, and so forth?"

Q. Didn't Mr. Coleman come up to you and say, "What are you doing in there; you are not an officer of election?" A. No, sir; he did not.

Q. No one asked you that? A. No, sir; he did not.

Q. And didn't you pull out this great pass from General Dimond to admit you anywhere, and that you came up to take charge? A. No, sir.

Q. And didn't he tell you neither you nor General Dimond could take charge? A. No, sir.

Q. And didn't you go out? A. No, sir.

Q. And didn't you decline to go out? A. No, sir. I don't remember that. I remember this card.

Q. All you remember is this ———, and so forth? A. That is enough to remember. I didn't show him no card.

[Here a recess was taken until 2 o'clock P. M.]

AFTERNOON SESSION.

[Mr. Dorn, of counsel for respondent, did not appear until 2:30 P. M., and when he appeared, the following occurred:]

MR. CLUNIE: I want to have it noted on the record that I protest against this delay. We have waited here over half an hour, and if it occurs any more, I shall ask that the testimony be transmitted to the Legislature.

MR. DORN: I apologize to the Court and to you, and if the fact is going on the record, I want it noted that I was not a minute after half-past two, and the clock will verify what I say.

R. J. BELLINGHAM.

A witness called on behalf of respondent, was sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Where do you reside, Mr. Bellingham? Answer—No. 1723½ Jones Street.

Q. Did you occupy any position in the Precinct Board at the last election? A. Yes, sir.

Q. What was it? A. I was Inspector of the Fifth Precinct of the Twenty-fourth Assembly District.

Q. There were two Inspectors, were there? A. Yes, sir.

Q. They were of different politics, were they not? A. Yes, sir.

Q. What was your politics? A. Democrat.

Q. You were the Democratic Inspector? A. I was the regular Democratic Inspector.

Q. After the close of the polls, did both of the Inspectors remain there at all times, or did you divide it up into watches? A. Mr. Barry, the additional Inspector—the Republican, was on with me after twelve o'clock at night. We went on at twelve, and stayed on until we were relieved in the morning.

Q. You did? A. Mr. Barry and I; yes, sir.

Q. On the first night of the count, which Inspector was in charge from twelve o'clock at night until six o'clock next morning? A. I was.

Q. And what election officers were with you—what Judges? A. Mr. Barry was the additional Inspector, Mr. Chebucker was the Judge.

Q. On your watch after twelve o'clock, who served with you? A. Mr. Barry was the Republican, and Mr. Chebucker, he was the Democratic.

Q. During the time then, on the night of the sixth of November, which was election night, from twelve o'clock at night until six in the morning, you were in charge? A. Yes, sir.

Q. The Inspector is what you might call the chief officer and has charge of the polls? A. The boss of the job.

Q. Then, you were the boss of the job from twelve o'clock at night until six o'clock the next morning? A. Yes, sir.

Q. Did you see a man there by the name of Chadwick? A. Yes, sir.

Q. Do you know Chadwick? A. I am very well acquainted with him.

Q. He was present at the polls at times, was he? A. He was.

Q. Were you absent at any time during that period from twelve o'clock at night until six o'clock the next morning? A. For about ten minutes.

Q. Where were you absent? A. To answer a call of nature. I was gone ten or fifteen minutes.

Q. How long were you absent? A. Not over fifteen minutes.

Q. Is it your impression that you were gone fifteen minutes? A. At the time I had no idea I had to make notes of things, or that there would be any hereafter to it, and I have no idea I was gone over fifteen minutes.

Q. When you were out of the room, who did you leave in charge? A. Mr. Chebucker. I never left the room unless there was a Democrat in charge, because I couldn't conscientiously leave it in charge of the Republicans.

Q. Who did you leave in charge? A. Mr. Chebucker. I never went out unless there was a Democrat in charge.

Q. When you went out, you say you left a Democratic Judge in charge? A. Yes, sir.

Q. What instructions did you give to this Democratic Judge when you went out and left him in charge? A. I told him at the time I left that we would take a recess for about ten minutes. I would like to go outside, and it was rather tedious, and I was doing all the calling off.

Q. You did all the calling off during that whole time? A. I did, from the time I went on until the morning I went off.

Q. And you told him to do nothing in your absence? A. I told him we would take a recess for about ten minutes.

Q. Have you any reason to know whether he obeyed that instruction or not? A. No reason whatever.

Q. What did he say? A. He said he would, yes, sir; and I believe he was Democrat enough to keep his word.

Q. When you returned to the room what did you find them doing? A. I found them sitting there, apparently waiting for me.

Q. You found them sitting there, apparently waiting for you? A. Yes, sir.

Q. Did they say whether they had counted any ballots or not? A. They did not say, but I am positive they did not.

Q. The appearance was that they had been waiting for you? A. Yes, sir.

Q. When you came in you were evidently what they had been waiting for? A. I was what they were waiting for.

Q. During the night did Chadwick call any ballots? A. No, sir; he did not.

Q. Was he allowed to sit down in the caller's chair and go over any ballots? A. He started to sit down and did it, and there were objections by several watchers that were there, and I sustained the objection.

Q. You are positive he never did it? A. He never did it while I was there.

Q. If he did it, he did it in the ten minutes while you were out? A. Yes, sir.

Q. Is there any probability that he did it while you were out? A. No, sir; I don't think so.

Q. How many ballots could have been counted while you were out, if he did call? A. At the extreme, there could not have been over three.

Q. It took some time to take it out, open it out, and call it? A. There were so many ballots frightfully disfigured, you couldn't read it.

Q. During the time you were out, could any ballots have been called, and could they have got themselves back into the easy position which you found them in? A. I don't think it could.

Q. Judging from what you know and all the circumstances, aren't you able to state that in all human probability, not a ballot was counted while you were out of the room? A. I am satisfied of it; yes sir.

Q. As nearly as a man can be, that don't see the thing with his own eyes? A. That is the idea.

Q. And you say this Chadwick didn't call a single ballot there? A. He did not.

MR. DORN: Will you let me take that letter?

MR. CLUNIE: I didn't introduce it, and I will not produce it.

MR. DORN: I ask that that be noted.

Q. An anonymous letter has been read here, and if a letter was sent by anybody, whether he had the manhood to sign his name or not, which said that between the hours of twelve o'clock at night and six in the morning on election night, Chadwick called off twenty-six ballots, and marked them, and defaced some other five or six candidates' names on them, using a gold pen to do it; is there a particle of truth in that statement? A. Nothing whatever, and I think the man who said so, to use a vulgar phrase, is somewhat rattled. It is teetotally impossible.

Cross Interrogatories.

By MR. CLUNIE: Are you sure that that could not occur when you were away? A. I am satisfied it could not occur.

Q. Why? A. There was not time enough for twenty-six ballots to be counted while I was gone.

Q. I ask you about the time you were gone? A. I was only away ten or fifteen minutes. I was there at the time the last ballot was counted, and I signed my name along with John Barry, and he and I signed our initials to each ballot, and I stayed there until the first ballot was laid on the board to count, and Barry and I left together. We went out and came on together at twelve o'clock, and the only time I was off then until I was relieved in the morning by Captain Durkee, was at the breaking of day.

Q. That is the time we are talking about now. A. And I didn't leave there only for the ten minutes, just before mentioned.

Q. Didn't you leave there one day, and weren't you relieved by Captain Durkee, and didn't you come away with Stephen Potter? A. No, sir; I did not.

Q. You say you are a Democrat, do you? A. Yes, sir; I am a Democrat, and as good as you are.

Q. Who put you on the Board? A. The Democratic County Committee.

Q. What Democrat put you on? A. The County Committee.

Q. To what man did you go to get on the Board? A. Mr. Johnny Lynch was the man who put me on the Board.

Q. Was that the Lynch who was up there for the Republicans? A. No, sir.

Q. Who is he? A. A member of the County Committee.

Q. Where is he from? A. He is from the Sixth Precinct of the Twenty-fourth Assembly District.

Q. And he put you on here in the Fifth? A. He is a member of the County Committee.

Q. Did he put you on in the Fifth? A. He did through a friend of his.

Q. Who? A. Mr. Potter.

Q. Then it was through Mr. Potter you went on, did you? A. Yes, sir.

Q. Stephen Potter? A. Yes, sir.

Q. How long have you been living up there? A. I have been living up there twenty-three years.

Q. Do you know Mr. Banks? A. Yes, sir.

Q. How long have you known him? A. Ever since I have been up there—twenty-three years.

Q. How long have you known him? A. Twenty-three years ago. I wasn't able to pronounce my name when I first knew him.

Q. How did you come to come out here as a witness? A. I come out here; I wanted to be subpoenaed in regard to this letter sent to Mr. Sullivan, and there was a person come down to my shop and asked me to come out here.

Q. Who was that? A. Nobody that you know.

Q. Just tell me who it was. A. It was a particular friend of mine.

Q. Tell me who it was. A. It was a man by the name of Charles Welch.

Q. What does he do? A. He is working down at some business.

Q. Whereabouts is he working? A. I don't know, in fact, where he was working.

Q. You said he was working? A. He was until lately.

Q. Where is he working? A. Down in some wholesale house.

Q. Where was he working? A. He was working down town.

Q. Where? A. I don't know where he was working. He was working the last time I knew.

Q. How do you know he was? A. Because he told me so.

Q. Did he tell you where he was working? A. No, sir; he did not.

Q. Where did you see him? A. I saw him on Stevenson Street, between Third and Fourth.

Q. Did he come down to see you? A. Yes, sir.

Q. Do you work down there? A. I do.

Q. Whereabouts do you work down there? A. I work at 256 Stevenson Street.

Q. What did he ask you to come down and testify for? A. He said I wanted to come out to the City Hall and testify.

Q. Is Welch a Democrat? A. Yes, sir.

Q. And he asked you to come out and testify for Banks? A. Did I say I came out to testify for Banks?

Q. You know you are testifying here for him, don't you?

THE WITNESS (addressing the Court): Your honor, am I compelled to listen to this man's insinuations?

Q. What did Welch ask you to come out here and testify? A. He asked me if I would come out here and testify; and I said, "What for?" and he said, "Because your name is in that letter," and I came out here and testified.

Q. When did you last see him? Did you see him again after that? A. No, sir.

Q. Did you tell him (Welch) what occurred there? A. What occurred where?

Q. Did you tell him what you were going to testify to? A. I did not.

Q. You didn't tell him anything about it? A. I did not.

Q. You didn't tell him anything about it? A. I did not.

Q. If Stephen Potter said you left that place with him, he is mistaken? A. If Stephen Potter said I left that place with him, yes, sir, he is mistaken.

Q. And if Mr. Dunn says you left that place with him he is mistaken, too? A. Yes, sir; he is mistaken, if he says that, too. Any more than ten minutes recess that was taken.

Q. Then Mr. Welch asked you to come out here and testify, did he? A. Yes, sir.

Q. Did he tell you who he was acting for? A. No; he simply said, "You should go out there and testify," and I asked him what for, and he said, "Well, your name was in this letter and it has been published in the paper as being drunk and going off and leaving the polls there so the Republicans would have a chance to scratch ballots."

Q. He asked you that? A. Yes, sir; that I should come out and testify, and he said, "Will you come out?" and I said, "Yes, I would."

Q. He told you your name was mentioned in the letter? A. Yes, sir; in the letter then published in the paper.

Q. And published as being drunk; did he say that? A. As being one of four or five.

Q. You swore a moment ago he said you were drunk? A. He told me to come out here, that my name was mentioned in the letter as being one of the men that were drunk.

Q. You are sure of that? A. Yes, sir.

Q. Welch is not in the Court-room? A. No, sir.

Q. When did you last see him? A. This morning.

Q. And you say he is a Democrat? A. Yes, sir.

Q. Did he mention Banks' name? A. No, sir.

Q. You swore he did mention Banks' name? A. No, sir; nor Sullivan's name either.

Q. You took quite an interest in the Banks' fight, didn't you? A. I didn't; I took an interest in the Sullivan fight.

Q. How did you do that? A. I voted for him.

Q. You are sure of it? A. I am positive.

Q. Will you swear? This vote closed on the sixth of November, didn't it? On the sixth of November the counting of votes commenced, didn't it? A. It did.

Q. When did the polls close? It closed about ten o'clock the next night, and it was one of the first precincts that were through, too.

Q. And from the time you started until it stopped, you never left there, except ten minutes, until it was counted? A. I didn't say that.

Q. You said so. A. I said when they got ready to count the ballots, we left there, and came back at twelve o'clock, and Mr. Barry and I came back at twelve o'clock, and I stayed on until Captain Durkee relieved me, and Mr. Nixon relieved Mr. Barry; then we come back again, and then I come back again, and it was five minutes to eleven, at this Hall that I had the ballots already returned.

Q. After you and Barry wrote your names on the ballots, you went off? A. After we signed each ballot with our initials.

Q. How long were you gone? A. Until twelve.

Q. You left about seven? A. That was about seven or half-past seven.

Q. And you are positive Chadwick did not call off ballots? A. Positive. How could he when our names were signed to them?

Q. You went away? A. Well, I left Captain Durkee in charge.

Q. Do you swear that during the time Captain Durkee was not there this man Chadwick didn't call a ballot? A. How could I swear it?

Q. You did swear it. A. You are mistaken.

Q. Then you don't swear to what happened during the time Captain Durkee was in charge? A. I am swearing to what occurred after twelve o'clock.

Q. But how about before twelve o'clock? A. Before twelve o'clock I swear about nothing, for I was not there.

Q. You came back at twelve o'clock? A. We came back at twelve o'clock.

Q. And you commenced to call then? A. And I commenced to call then.

Q. How long did you stay then? A. Until six or half-past six in the morning.

Q. You went off then? A. I went off then.

Q. And Captain Durkee came on again? A. And Captain Durkee came on again.

Q. When you went off that time, didn't Mr. Potter go away with you? A. No, sir; he didn't.

Q. Who did you leave with? A. I left with John Barry.

Q. What is he? A. He is a Republican. We live within half a block of one another, and we went off together after the last ballot was counted, and we went off together.

Q. On the first watch, you and Barry, this Republican, went off together? A. Yes, sir.

Q. And on the second watch you went off together? A. Yes, sir.

Q. And when the ballots were finished you went off together? A. No, sir; he did not. He left, and I came out to the City Hall, here.

Q. You passed on every ballot that was counted there? A. Yes, sir.

Q. And the Board didn't vote? A. The Board did vote; there was a scratch for Reynolds and Sullivan, and I allowed it for Sullivan and Reynolds; and I don't believe Judge Finn did, if it ever come to that.

Q. You knew you were doing wrong? A. No, I didn't know it was wrong.

Q. What made you say Judge Finn would cast it out? A. He cast one out for Russell and McIntyre.

Q. Did you reject any ballot? A. Yes, sir. Strohmeier sent in a ballot voting for McIntyre, and I rejected the ballot on account of the man having his name and address on the bottom. This one-eyed Republican, that sleeps with his eye open, said he saw twenty-six, and it is not so.

Q. How do you know? A. Because I was there.

Q. You were not there all the time? A. I was there with the exception of ten minutes.

Q. You were not there when Mr. Durkee was there? A. No, sir.

Q. This man don't charge that you were the one that was there? A. Well, he couldn't very well.

Q. I will read you the letter. It says: "This man Chadwick worked hard to get votes for Banks. Well, all right still," [etc., reading from the letter]; he is right there, ain't he? A. Yes; that is right. I laid the first ballot under the rack, and Mr. Durkee took it and put it under the rule, and Mr. Durkee called it.

Q. He is pretty near right up to that point? A. Yes; he is right there.

Q. [Reading] "Then a man named Bellington or Bellingham called out until three P. M." How is that? A. That is me, yes.

Q. That is pretty near right, isn't it? Until three P. M.? A. No, sir; that is wrong. That man is rattled that wrote that letter, or he is a rogue.

Q. You are rather familiar with those terms "rattled" and "rogue," aren't you? A. I think any man in that precinct acting as an officer, as I did, would certainly know from the tenor of that letter that it is impossible to be so.

Q. You did not read the letter, did you? A. I read the synopsis of it in the paper.

Q. You never read it? A. I swear I read my name in it; that Potter and I went off at three and returned at five. I read it in the "Daily Examiner."

Q. Where he says you and Potter went out at three P. M., and returned about five—that is correct, is it? A. Yes, sir.

Q. What time did you leave? A. It must have been in the neighborhood of between two and three when we took a recess for ten minutes, and it is rather tedious to call off ballots.

Q. You went on until two or three, and you took this recess? A. We took this recess between two and three, for about ten minutes.

Q. Then you kept on how long? A. Then we kept on until my relief came.

Q. When did he come—what time? A. He came about six or half-past six in the morning.

Q. But you are sure you were on until six or half-past six? A. Yes, sir.

Q. Then who came on? A. Then Captain Durkee came on.

Q. Who were Clerks during the time you were there? A. There was Mr. Williams and Mr. Simpson.

Q. This man says that when this dirty work was going on a young man named Frank Dunn, and Fred Conway were Clerks. A. Yes, sir; those were the two Clerks there.

Q. You weren't there then? A. I was there after twelve o'clock.

Q. Were you there when the young men named Frank Dunn and Fred Conway were Clerks on that night? A. I was present while they were Clerks, certainly.

Q. After twelve o'clock? A. No, not after twelve o'clock.

Q. When were they Clerks? A. Before twelve.

Q. What time did they commence? A. As soon as the ballots commenced.

Q. What time was that? A. Seven or half-past seven.

Q. And you came away? A. I came back at twelve.

Q. What time did you go away? A. I went away at twelve.

Q. I thought you said you went away at seven and came back at twelve. A. Yes, sir; I went away at seven and came back at twelve.

Q. You swore a minute ago you were there when they went away. A. I said Simpson and Williams were Clerks when I was on calling off the ballots.

Q. A moment ago I asked you if Conway and Dunn were Clerks from seven until twelve, and you said they were. A. Well; they were.

Q. You don't know whether they were, do you? A. They were sitting in the Clerk's chairs, ready to act as Clerks, ready for the ballot to be called off, and I saw them there, and I must know they were there.

Q. You don't know what they did after you left? A. No, I do not.

Q. You don't know what occurred? A. No, sir; I do not.

Q. And you don't know what occurred when Mr. Durkee was calling off, and Conway and Dunn were Clerks? A. No, sir.

Q. You know nothing about it? A. No more than you do.

Q. This man says you went off at three p. m. and remained till six, and you think that is wrong? A. Yes; I think he is off altogether.

Q. You don't know what this man did, do you? A. What man?

Q. When you weren't there. He says, "During that time, while Durkee was calling and Conway and Dunn were acting as Clerks, this work went on." Now, you were not there? A. If you read on down, you will see. Does he say anything about drunks coming in there and sleeping?

Q. While you were off, you don't know about that, do you? A. Yes, I was there when those drunks came in. Whoever wrote the letter wasn't man enough to tell Mr. Sullivan or sign his name. He was not man enough to mention their names and say who it was that was drunk. He simply said there were four or five men come in there. Those men they were outsiders, and he didn't say that.

Q. Yes, he does: "Then Chadwick sat down again to call off ballots and there were four people asleep in the room." Now, he don't say the Board of Election were drunk? A. No, sir; but he don't say they were outsiders.

Q. You are certain that during all that count, you have such confidence in yourself, that you know you didn't make a mistake; is it impossible? A. No, it is not impossible for me to make a mistake.

Redirect Interrogatories.

By MR. DORN: What do you mean by saying that it is not impossible for you to make a mistake? A. I believe it is not impossible for any

man to make a mistake. Every man is liable to make a mistake, the same as this man has that wrote this letter.

Q. Even Mr. Clunie might make a mistake? A. I think he has made a mistake now.

Q. You say it is possible that a mistake might have been made. Is it at all probable that in calling off the ballots you did make a mistake? A. No, sir; it is not probable. I used the ruler and I was perfectly sober, and I defy any man to say different; and I had several men sleeping with one eye open, but this man that has written the letter wasn't there, and I will swear that. And I called off and ruled off every name.

Q. If a man had been sleeping with one eye open, he couldn't have looked over your shoulder? A. This man wrote so many votes were called, and the names. He called, among other names, Russell's name, and you can notice in the Fifth of the Thirty-fourth there was one mistake made, and that was through Strohmeyer writing his name on the ticket, and Judge Finn allowed it, and that was one vote. Now, I am satisfied if Mr. Sullivan had a recount, there wouldn't be that difference.

Q. Then in all the counting of ballots you tried your best to call them accurately and properly? A. I did, sir; as a genuine first-class Republican—or Democrat, rather. I made a mistake.

By MR. CLUNIE: Which is it? A. Democrat, sir; and always been and always will be, I hope.

By MR. DORN: And you tried to call them accurately and honestly, and even if you hadn't, you think there were enough men watching there with zeal to detect mistakes? A. I think it would have been impossible for me if I had wanted to call off names differently, there were so many Republicans looking over me.

Q. If a man asleep on a bench, with one eye open, had ruled the ballots with such accuracy that he could say that the Sheriff, the County Clerk, the State Senator, and the Recorder, were scratched with a gold pen between the first and second fingers, and called wrong— A. [Interrupting.] It is a natural impossibility, the way these were laid out, for any man to do it, even if he had second sight.

Q. In other words, that letter is tomfoolery? A. It is, sir. I believe the man that wrote that letter is imposing on Mr. Sullivan, or is a crank.

Q. You have no idea who wrote it, have you? A. No, sir.

By MR. CLUNIE: You didn't write it? A. No, sir. I will give you a specimen of my handwriting, if you want it.

Q. No; I will take your word for it. A. You need not do that.

P. C. HAWKINS.

A witness on behalf of respondent, being duly sworn, testified as follows:

Direct Interrogatories.

By MR. DORN: Mr. Hawkins, where do you reside? Answer—I live 309 Bay Street.

Q. How long have you lived there? A. I have lived off and on in that end of town for thirty-six years.

Q. Where were you located in the last election? A. I was in the Second of the Thirty-fourth.

Q. Were you present while the votes were being counted at any time?

A. I was; yes, sir.

Q. Were you an officer of election there? A. I was, sir.

Q. What office did you hold? A. I was Judge of Election.

Q. You were Judge of Election? A. Yes, sir.

Q. Who was the Inspector there? A. Mr. Callaghan.

Q. What politics is he? A. He is a Democrat, I guess.

Q. Don't you know that he is? A. I know that he is; yes, sir.

Q. When the polls closed who was in charge; what Inspector? A. Callaghan.

Q. What did they do? Give us the manner in which the proceedings were conducted. A. He ordered the hall cleared, and of the balance he ordered me out, and said I should have gone out.

Q. Why did he say you ought? A. I don't know.

Q. What did he say? A. He said I should have gone out.

Q. Did you go? A. I didn't much.

Q. Why didn't you? A. Because I was there to represent the Republican side of the house, and I was going to stay there.

Q. When you went on with the count, who called the ballots? A. There were three: Mr. Callaghan, Mr. Waterman, and Mr. Coleman, taking turn about. They would spell each other.

Q. Give us the manner in which they called them. A. Part of the time they were calling them too fast for the Clerks. The Clerks would be better judges of that than I would, but they were calling them too fast for the Clerks to keep tally.

Q. Whenever, in turning backward and forward on the pages, there was a difference in the tally, and one Clerk had it four, and another tally or one Clerk had it two, and another one one, what did they do? A. There was a difference twice.

Q. What did they do? A. They counted the votes.

Q. You say there were mistakes sometimes about their calling them too fast for the Clerks to get the votes? A. Yes, sir.

Q. If the mistake was against the Democrats, how did they change it? By giving the Democrat the extra vote? A. I don't know.

Q. You don't know? A. No, sir.

Q. When you saw how business was being conducted there, what did you do? A. Mr. Banks came along, and I told him he must get another man. I told him I thought there was something wrong, and he must get another man there to assist me watching.

Q. Did they do that? A. He did, sir.

Q. After that, things went better, didn't they? A. After that, the police officer come and told me that there was too much noise on the outside, and that the Tally Clerk should repeat the word after the man that was calling the name, and I, as officer of election, of course, told them that the outsiders must not do so much talking.

Q. After that you had no fault to find with the way the matter was conducted? A. No, sir.

Cross Interrogatories.

By MR. CLUNIE: You are a Republican, are you? A. Yes, sir.

Q. How long have you been a Republican? A. I have been a Republican for a good many years—conservative.

Q. How many? A. I think it must be nineteen or twenty years.

Q. You have just been a conservative Republican? A. No; I used to,

be a Democrat at one time, but I thought I would go over on the strong side—on what I considered the best side.

Q. Did you study the tariff? A. The tariff had nothing to do with my being a Republican.

Q. You had nothing to do with the tariff? A. I was in favor of high tariff—protective tariff.

Q. In the last election were you in favor of high tariff? A. I was.

Q. You were pretty high? A. Yes, sir.

Q. You were pretty high tariff the last election? A. Yes, sir; I was.

Q. Are you a friend of Mr. Banks? A. I am a friend of the Republican party.

Q. You are a protector of the Republican party? A. No, I was a friend of Mr. Banks. I didn't claim any special fight for Mr. Banks, any more than the rest of the Republican ticket.

Q. You had been a friend of Banks, hadn't you? A. I don't see why I should.

Q. You and Matt. Collins here are great friends? A. I am not a graduate of Mr. Collins.

Q. He has no graduates, has he? A. I don't know. He has accused me of being one of his friends.

Q. You were not one of his rock-rollers in the last campaign two years ago, were you? A. No, sir.

Q. You told him the other day you were out here guarding him. A. I don't know; give me the doubt, though.

Q. You told him that, did you? A. Yes, sir.

Q. How long have you held that position? A. There is nothing in that.

Q. When did you first determine to go on the Republican Board? A. I didn't know anything about going on the Election Board. I had postal card sent to the house about on the Register Board, and then I was wanted on the Election Board.

Q. You never asked to get on? A. No, sir.

Q. And you never had any talks with anybody about getting on? A. No, sir; I didn't.

Q. You just got the postal card? A. I just got the postal card sent to the house.

Q. And you were put on? A. Yes, sir.

Q. You went down election morning, did you? A. Yes, sir.

Q. And you found everything all right? A. Yes, sir.

Q. Everything went along all right? A. Yes, sir.

Q. Any trouble there? A. No, sir.

Q. And the polls closed? A. Yes, sir.

Q. The counting of the votes commenced? A. Yes, sir.

Q. No trouble then? A. No; the only trouble I noticed was calling the name too quick; the Tally Clerks couldn't tally as quick as the names were called. There were mistakes two or three times there.

Q. Were you trying to keep run of the Democratic Clerks? A. No: I was there to see no bulldozing was going on.

Q. Who was doing it; this man [indicating]? A. No; but I think they were calling them too fast.

Q. Who was "they?" A. There were three men.

Q. What were their names? A. Callaghan, Waterman, and Coleman.

Q. Who was the most rapid? A. Coleman was.

Q. The Democrats were the most rapid? A. They were; you bet they were.

Q. You didn't notice the rapidity of the Republicans, did you? A. I did.

Q. You compared the speed as they went along, did you? A. I did.

Q. The Democrat was a little bit more intelligent, was he not? A. Yes; I think he called three or four names to the one, because Mr. Waterman is a very fine gentleman, and he called rather slow—too slow.

Q. He was too slow and the other man was too fast? A. No. I have served on Election Boards in this city before you were born, I think, and I had pretty good experience in that, and from the manner in which they called them——

Q [Interrupting.] You are a sort of professional server on them, are you? A. No, sir.

Q. You said you had been on them before I was born. A. You ain't thirty years old.

Q. And you have been on Election Boards for thirty years? A. No, sir; not in San Francisco.

Q. Well, where? A. Well, up in the country.

Q. What is your business? A. I am not doing anything in particular now.

Q. How long have you been in that business? A. I was laid up two years with rheumatism.

Q. For two years you have been doing nothing? A. I never do a day's work if I don't want to.

Q. You are a capitalist? A. I have got enough to keep the wolf from the door. I was not able to work, or I would have done it.

Q. That was the reason? A. That was the reason.

Q. You have been taking quite an interest in politics in this city, haven't you? A. No, sir.

Q. How long have you been here? A. The last time I was here was nineteen years ago. I come here in '52, the last time that I lived here, in '53 and '54, and I lived down the country and come in here in '59.

Q. Haven't you been taking an interest in politics all that time? A. No, sir.

Q. You have been a Republican? A. Yes, sir.

Q. How long long have you been a Republican? A. I voted for Democrats and Republicans.

Q. You have scratched your ticket? A. A good man if he is a friend of mine.

Q. That night in the Board, did the Tally Clerks complain of going too fast? A. Yes, sir.

Q. They said that, did they? A. Yes, sir.

Q. Did they tell Callaghan that? A. They didn't tell Callaghan that in the Board; they complained about calling the names too fast.

Q. Who did they complain to? A. To the Board, not one certain man alone.

Q. Whenever they complained, did they stop calling fast? A. That didn't stop them.

Q. Then the Tally Clerks would go right on, would they? A. Yes, sir.

Q. Then they complained they were too fast? A. Yes.

Q. What did Mr. Callaghan say to him? A. He would wait until they would rectify the mistake.

Q. Then he would go slow? A. Yes, sir; he would go on a regular trot—call them fast.

Q. Do you think he was doing that to defraud anybody? A. I don't know that he was.

Q. Do you know that he was? A. I don't know that he was. I didn't like to have the names called fast, but I don't think he did it to defraud anybody.

Q. Were you being paid there by the day? A. By the city and county.

Q. You were paid by the day, weren't you? A. Yes, sir.

Q. You didn't want the job to get over too quick, did you? Was that it? A. Yes; if you would put me there again for \$200 I wouldn't go there.

Q. That was not the reason, then? A. No, sir.

Q. Why didn't you go there again? Did you have anything unpleasant? A. I don't want it, sir.

Q. You know John Sullivan, don't you? A. I do.

Q. Do you know him pretty well? A. Yes, sir.

Q. You have been against him ever since he was nominated first, haven't you? A. I have not. I never raised my voice against him.

Q. You were a Republican? A. Yes, sir.

Q. And you were against him? A. Yes, sir.

Q. And you asked your friends to vote against him? A. No, sir; I did not.

Q. And you asked them to vote the Republican ticket? A. That is a horse of another color.

Q. You knew Mr. Banks was on the Republican ticket, didn't you? A. I did.

Q. And you asked them to vote the Republican ticket? A. Well, I didn't ask them to vote for Banks or against Sullivan.

Q. You asked them to vote the ticket, though? A. That is different.

Q. You know Billy Maxwell, don't you? A. Yes, sir.

Q. You have known him since he was a little boy? A. Yes.

Q. He is a pretty good fellow, ain't he? A. Yes, sir.

Q. Did you have any talk with him before election? A. Yes, sir.

Q. Did you go to lunch with him one day before election? A. No, sir.

Q. Did you talk about stuff there? A. No, sir.

Q. Did you talk about stuff? A. I had some pie there, but no money.

Q. Didn't you tell Mr. Maxwell one day when you were eating lunch, that you had been training with Bill Higgins, but that there was nothing in Banks or that crowd for you, and that you were for Sullivan? A. I did not.

Q. Are you sure of that? A. Sure of it.

Q. Tell us what conversation you and he had. A. I couldn't tell you what conversation we had. We never had that conversation, I know.

Q. How do you know you didn't, if you don't know what conversation you had? A. I know if I made any such remark I would remember it.

Q. You don't know what remarks you made? A. I tell you he insisted I should go with him, and during the time I was there I had lunch and he paid for it, but I didn't wait to get lunch, and my wife was waiting for me at O'Brien's store, and he insisted very kindly that I should have dinner.

Q. You did have a talk? A. Yes; but not politics.

Q. Did you mention Sullivan's name? A. I did not; he might have done it.

Q. Did you? A. I have in conversation with him.

Q. What was that conversation about the Sullivan and Banks business? A. I don't remember mentioning Banks' or Sullivan's name.

Q. Did Maxwell mention it? A. He might, but I don't remember it.

Q. And you don't remember mentioning it yourself? A. No, sir.

Q. And you don't remember what conversation occurred? A. No, sir.

Q. No one has told you to get a little forgetful on the stand? A. No, sir; I am here to tell the truth and shame the devil.

Q. You have a son, haven't you? A. Yes, sir.

Q. He is on the police force? A. He is.

Q. How long has he been there? A. Not long.

Q. How long? A. I guess about a month.

Q. You got him on, didn't you? A. I didn't, sir.

Q. Who got him there? A. I give it up.

Q. You don't know? A. I don't know.

Q. You swear positively you don't know how he got on the police force?

A. Yes, sir. Mr. Maxwell knows very well that I don't know who put him on.

Q. Do you know Mr. Banks? A. I do.

Q. Did you have any talks with him? A. Any talk with him?

Q. Yes; did you and he talk before election? A. Probably two or three days before election I was introduced to Mr. Banks. I never knew Mr. Banks or talked with him before election.

Q. Then you did meet him three or four days before election? A. Yes, sir.

Q. Did you and he have any conversation then? A. No.

Q. How did you come to be introduced to him? A. Somebody introduced me to Mr. Banks.

Q. Who was that friend? A. I don't know.

Q. Was it Matt. here [indicating]? A. It might have been; I can't say.

Q. Don't you know it was? A. I can't say, sir.

Q. Just think for a minute, and try and refresh your memory on that, and see if it was not Matt. Collins that introduced you to Banks. A. No; I don't think it was. It might have been.

Q. Will you swear it was not? A. No; I will not.

Q. Where did you meet him? A. I think I met him on Union Street first; and there was some friends with him.

Q. Union and what? A. Union and Powell. I met him on the sidewalk, and I was introduced to him, and I didn't know Banks previous to that.

Q. How did you come to be introduced to him? A. I met him, and he was introduced to me on the street.

Q. He was out hunting candidates, wasn't he? A. No; I don't know. Probably he told me "This Banks is a candidate for the State Senate, and we want you to vote for him."

Q. Did he say that? A. I don't know that he did. I am only supposing.

Q. That is another time you forget? A. I don't know.

Q. You forget about that, don't you? A. It might have been; yes, sir.

Q. Then, as a matter of fact, you know you were introduced to Mr. Banks? A. Yes, sir.

Q. And you don't know what Banks said? You forget on that again, don't you? A. I don't know what he did say.

Q. Where did you and Banks go then? A. I went down town; I don't know where Banks went to.

Q. Didn't you go with Banks? A. I did not.

Q. Did he and you arrange for another meeting? A. No, sir; I did not.

Q. Didn't he arrange to go down to the Mint Saloon with you, afterwards? A. No, sir.

Q. How often do you go down to the Mint Saloon? A. Very seldom.

Q. How often? A. I don't believe in a year I was in there three times.

- Q. Haven't you been there very often before election? A. I don't think I was. If I was there, I think I would remember it.
- Q. Then you were there? A. What difference is there going in the Mint Saloon than any other saloon?
- Q. You were in there before election, then? A. I was.
- Q. Have you been in there since? A. I have.
- Q. Did you see Banks there? A. No.
- Q. Did you have any talk with him? A. No; no more than having a drink.
- Q. And he didn't say anything about your valuable services, did he?
- A. No, sir.
- Q. Either before or after election? A. No, sir.
- Q. Do you know Mr. Higgins? A. I do.
- Q. Did you go to see him in the Mint Saloon? A. No, sir.
- Q. Where did you see him? A. I saw him in the State Central Committee Rooms.
- Q. What were you up there for? A. My business was a Republican.
- Q. What were you going up there for? A. I went up to see what was going on.
- Q. Was there anything unusual up there? A. Nothing unusual.
- Q. What do you mean by you were going up there to see what was going on? What do you mean by that? A. When I was down town once in awhile I would go down there to see what was going on.
- Q. Did you and Mr. Higgins have a talk? A. I did.
- Q. Do you forget that? A. No, sir.
- Q. What was it? A. "How do you do?"
- Q. That was all: "How do you do?" A. That was all.
- Q. Your conversation was not very lengthy? A. No, sir.
- Q. Mr. Banks was not there at the time? A. I might have seen Mr. Banks there.
- Q. Mr. Banks didn't say anything? A. That is all. I didn't go there to solicit anything from him.
- Q. You wouldn't do that? A. No, sir; I asked nothing.
- Q. Do you know the Governor of the State? A. I do not.
- Q. You never met him? A. I might, and not have known him.
- Q. He is a little fellow with a great beard over his face. Do you know him? A. I don't know him.
- Q. You never had any talks with him? A. No, sir.
- Q. How long before election did your son go on the police force? A. I think he went on the force after election.
- Q. How long since? A. I guess it aint a month since he got there.
- Q. And you used no efforts to get him on at all? A. No, sir.
- Q. And you didn't ask Mr. Higgins about it? A. No, sir.
- Q. You say Mr. Banks came into the place there on the day of election. What was he doing? A. He and all the candidates that come around set them up for the boys; and God help the candidate that did not.
- Q. Mr. Sullivan didn't do that, did he? A. He did.
- Q. Mr. Sullivan set them up? A. He did—whenever he come there.
- Q. You said if a candidate come around and didn't set up the drinks, God help him. Did Senator Sullivan come in there once and set them up? A. I think he did set them up during the counting of the votes.
- Q. Will you swear that he did? A. I would ask him if he was in the room. I think he did. He is a liberal candidate; he was about as liberal a man as come around during the election.

Q. You don't know whether the candidates were liberal or not, do you?

A. I mean about setting up drinks for the boys.

Q. Were you around hunting up liberal candidates? A. No, sir.

Q. And you know they were all setting them up for the boys? A. Any candidate that didn't set them up—

Q. [Interrupting.] God help him. A. He'd better stay home.

Q. Will you swear Mr. Sullivan came in there and set up the beer at any time? A. To the best of my knowledge I think he did. I know he treated several times during the election.

Q. I mean during the count? A. I don't know whether he did or not.

Q. Won't you swear he treated several times there? A. I think he did.

Q. To the best of your recollection he did? A. Because these were boys that were very anxious and only too glad to have him come around often. Mr. Banks was a liberal fellow, too. So all the candidates were liberal; and those that were not liberal, they were no good, I tell you.

Q. That was the way you felt up there against all the candidates? A. No, sir.

Q. Didn't you say, "God help the candidates that come in and didn't beer up?" A. Yes, sir.

Q. And that is the way you felt? Didn't you say before election you were for Sullivan? A. I did not.

Q. You never stated that to anybody? A. No, sir.

Q. You never saw the Governor to talk to? A. No, sir.

Q. Your friend Matt. never took you up and introduced you to his friend the Governor? A. He did not, sir.

Redirect Interrogatories.

By MR. DORN: You said your son is on the police force? A. Yes, sir.

Q. Don't you know, as a matter of fact, that he was put there by the influence of a Democratic State Senator? A. I heard so, but I couldn't swear to that, though.

Q. Who was the man? A. Senator Goucher, I think. put him on.

Q. Isn't Senator Goucher the man who recommended him, and interested himself, and got the position for him? A. Yes, sir.

Q. You, at least, had nothing to do with getting it for him? A. Not a thing.

Q. You said something about the candidates coming around there, and setting up the beer for the boys. Did you see the contestant in this case, during the time votes were being counted, around there? A. I think I did.

Q. From the time the polls opened until you were through counting the votes. Mr. Sullivan was around to see you, wasn't he? A. He was.

Q. And if he came around to see you, he didn't go away without making his contribution to the poor box? A. No; he always contributed.

Q. Mr. Sullivan was a liberal fellow, and whenever he come around during the election and during the count, he was always willing to set up the beer for the boys? A. Always willing.

Q. About the time the polls were going to close, a little before six on the afternoon of election day, you were inside the polling place, weren't you? A. I was.

Q. What proposition was made to you to stand aside while they got in a few votes for Sullivan? A. There was a gentleman come along before the polls closed and told me to stand back, that he had some boys that

were going to vote for Johnny Sullivan, and he said, "You will have to stand back."

Q. When was that? A. That was the evening of election, the sixth.

Q. Just about the closing of the polls? A. Yes.

Q. What did you do? A. I told him it wouldn't go.

Q. You told him that kind of business wouldn't do? A. I told him if they didn't belong there they couldn't vote there.

Q. And they were not allowed to vote there? A. No, sir; they were not. The polls closed at that moment.

Q. He told you to stand aside, that they had a few votes they wanted to put in for Sullivan? A. Yes, sir.

Q. And you told him that kind of business didn't go? A. That is what I said, yes.

Q. Who was with the man that made that proposition to you? A. I think Mr. Maxwell I saw there.

Q. Wasn't Billy Maxwell right there at the time, and didn't he come up with him? A. I think he was in the buggy with him, and I was right by the window. I think I saw Maxwell's face, but he didn't make the proposition.

Q. Mr. Maxwell didn't make any proposition. Was he there with the man that did? A. Mr. Maxwell didn't make any proposition, but he was there with the man that did.

Q. Who was the man? A. Mr. Daugherty.

Q. You say you had a conversation with Maxwell in the restaurant. A. I did.

Q. As a matter of fact, didn't Mr. Maxwell propose to you that if you would drop the Republican ticket, or at least, if you would drop Banks and let Banks go, and stay in with Johnny Sullivan, he would give you \$100. A. No, sir; he did not.

Q. He didn't make any such proposition as that to you? A. No, sir.

Q. He didn't offer you any money to stand in with Sullivan? A. He did not. He knew better. That is a get-up he got on me.

Recross Interrogatories.

By MR. CLUNIE: Just before the polls closed, or as they were about to close, three or four young men came up, didn't they? A. Two in a buggy, and he said, "Stand back, Hawkins, I have got some men I have got here I want to vote for Johnny Sullivan, and don't you say anything."

Q. He said, "Stand back, Hawkins, I have got some men I have got here I want to vote for Johnny Sullivan, and don't you say anything?" A. Yes, exactly. I was then receiving the tickets.

Q. And you shut the box, didn't you? A. I did not.

Q. What did you do? A. They announced it was seven o'clock. They didn't try to vote.

Q. You told him they couldn't vote there? A. Not without they lived in that precinct.

Q. Don't you say they came up and said they wanted to vote for him, and you told them they could not? A. Without they lived in the precinct. I said, "They will vote here if they are entitled to vote."

Q. You didn't say that a minute ago? A. I did.

Q. Didn't you say, "They cannot vote here, and they can't do that kind of business?" Didn't you stop electors from voting for Mr. Sullivan? A. I did not. I said, "If they didn't live, and they were not on the register there, they couldn't vote."

Q. Who is this Daugherty? A. I guess he is in the Fire Department.

Q. How do you know his name was Daugherty? A. Because I know him.

Q. How do you know? A. I have known him; he was raised in my neighborhood.

Q. And you don't know what he does? A. He is in the Fire Department.

Q. Daugherty came up and said, "Get out of the way," he had some men he wanted to vote for Sullivan? A. Yes, sir.

Q. And you told him they couldn't do it without they lived in the precinct? A. No, sir.

Q. And they didn't attempt to vote? A. They did not. I knew how many names we had on the register, and we were waiting for one or two names at the time, and I knew we had pretty near all voted on that.

Q. How many did you have on the register? A. I forget.

Q. You knew a little while ago? A. I did not.

Q. You said you knew the number that was on the register? A. These men were in there all the time—

Q. [Interrupting.] Didn't you swear a few minutes ago that you knew how many men were on the register? A. I did not.

Q. You did not swear you knew how many were on the register? A. No, sir.

Q. How many were on there? A. I don't remember.

Q. Didn't you tell me a few minutes ago you didn't know how your son got on the police force? A. I did.

Q. You just told Mr. Dorn you did? A. I said this: I didn't know who got him on; it is on hearsay. If you go and tell me something out doors, I am not supposed to swear to that.

Q. Didn't I ask you who got your son on the police force, and didn't you say you didn't know? A. You asked me if I helped to get him on. I don't know for certain that Senator Goucher put him on. He said he would put him on. I didn't speak to my son three times since he went on the police force.

Q. But you only told your son Goucher was going to put him on the police force? A. Is that the reason I would say so?

Q. You swore so when Mr. Dorn asked you. A. I simply answered him.

Q. Do you swear Mr. Maxwell was there? A. No, sir.

Q. At the Second Precinct, where you were, when these men came up? A. Yes, sir: I think he was.

Q. And you are sure of that? A. Yes, sir.

Q. And you are just as sure of that as you are of anything else you testified to? A. I think he was in the buggy.

Q. His brother and he look alike? A. I don't know.

Q. And you are sure of that now? A. Yes.

Q. And you are just as sure that Mr. Maxwell was in that buggy as you are of anything else you testified to? A. He was at the time.

Q. You are sure of that? A. I am sure of that.

Q. A moment ago you wouldn't testify positively on that. You said you didn't know, you just saw his face. A. You are coming on cross fire, aint you?

Q. I asked you the question, and a few moments ago you couldn't swear positively Maxwell was in the buggy, and now you swear positively to it. How do you account for that change? A. A man will refresh his memory sometimes.

Q. Then your memory has suddenly been refreshed, is that it? A. That is it.

WILLIAM McNEIL.

A witness on behalf of respondent, was called, sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Where do you reside, Mr. McNeil? Answer—No. 439 Union Street.

Q. Where were you at the last election? A. The Second of the Thirty-third.

Q. The Second of the Thirty-third? A. Yes, sir.

Q. What were you doing there? A. I was a ticket peddler.

Q. How long were you there? All day? A. All day, excepting about an hour. I went away about one o'clock, and come back about two.

Q. What proposition, if any, was made to you with regard to voting for Mr. Sullivan for Senator? A. There was a party come up to me and offered me \$2 50 to vote the Democratic ticket.

Q. Who was it? A. I don't know his name.

Q. Who was it? A. I don't know his name.

Q. Have you watched to see if he was in this Court-room? A. No; I don't see him.

Q. Would you know him if you saw him? A. Yes, sir.

Q. And you don't know his name? A. I don't know his name.

Q. Had you ever seen him before? A. Yes, sir; I had seen him lots of times.

Q. But you are not able to state the name? A. I don't know his name.

Q. What did he say? A. He called me one side and asked me what ticket I was going to vote, and told him; and he said he would give me \$2 50 if I would vote the Democratic ticket.

Q. What did you tell him? A. I told him I would not do it.

Q. And that is all? A. That was all, and he went away.

Cross Interrogatories.

By MR. CLUNIE: Where do you reside? A. No. 439 Union Street.

Q. How long have you lived there? A. About eighteen months.

Q. Where did you live before? A. No. 4½ Gerke Place.

Q. That is in the Twenty-first Senatorial District, isn't it? A. Yes, sir.

Q. Who did you live with at this last place you lived? A. With my wife.

Q. You are married, are you? A. Yes, sir.

Q. And your wife lives there with you? A. Yes, sir.

Q. And you were employed by the Republican party as a ticket peddler? A. Yes, sir.

Q. And you were in charge of the Republican ticket there? A. Yes, sir.

Q. And this man came up to the table and asked you that? A. No, sir; he didn't come up to the table.

Q. Where did he ask you that? A. I was going down to lunch.

Q. Where did he meet you? A. Right opposite the place.

Q. He had been around there all day? A. No, sir.

Q. He had been around there, though? A. I saw him once before.

Q. And he saw you in charge of the Republican tickets? A. Yes, sir.

Q. And he knew you were in charge for the Republican party? A. Yes, sir.

Q. And he told you he would give you \$2 50 to vote the Democratic ticket? A. Yes, sir.

Q. Didn't it strike you as being a little funny for a man to come up to you, a man who was peddling the Republican ticket, and ask him that?

A. I thought that it was rather small.

Q. How much did you get from the Republican party? A. \$5.

Q. Who hired you? A. Fred. Jones.

Q. Did Mr. Banks hire you? A. No, sir.

Q. You don't know Mr. Banks? A. Yes, sir.

Q. How long did you know him? A. About two or three days before election, up in the grocery store.

Q. How did you come to be introduced to him? A. Because he come in, and I was introduced to him.

Q. Did you get \$5 from him? A. No, sir.

Q. What talk did you have with him? A. Nothing particularly.

Q. Where do you work? A. Down here at Orr & Jones, Pine and Battery.

Q. What are you doing? A. Keeling.

Q. How long have you worked there? A. Two weeks.

Q. Are you working there now? A. No; not for two weeks. I was fixing up a shop.

Q. You did no work on election day? A. No, sir; the shop was closed.

Q. You have lived in that district for a long while? A. Yes, sir.

Q. You are pretty well acquainted up there? A. Yes, sir; I was born up there.

Q. This man that offered you \$2 50 was a stranger to you? A. No, sir; he lived up there. I don't know his name. I see him coming up Dupont Street pretty often.

Q. Did you ever see him around the district? A. I saw him passing up.

Q. And he came up to you and asked you that? A. He asked me what ticket I was going to vote.

Q. And what did you tell him? A. I told him the Republican ticket.

Q. You told him the Republican ticket? A. Yes, sir.

Q. Did you tell him you were in charge there? A. No; I told him nothing.

Q. And you told him you wouldn't do it? A. Yes, sir.

Q. Did he walk off? A. Yes, sir.

Q. Did he mention Mr. Sullivan's name? A. No, sir.

Q. Did he mention Banks' name? A. No, sir.

Q. Did he offer you \$2 50? A. Yes, sir.

Q. Did he have it in his hand? A. No, sir; he didn't have it in his hand. He had his hand in his pocket.

Q. Where was that? A. Corner of Union and Montgomery Streets.

Q. What precinct was that? A. The Second of the Thirty-third.

Q. What time did you go there that morning? A. At the time the polls opened, six o'clock.

Q. Whom did you see there? A. I saw Fred. Jones, and he told me to place myself, and I went and got at the table.

Q. Did you see Jones vote? A. No. I don't know whether he voted in that precinct or not.

Q. You voted there? A. Yes, I voted there.

Q. What time did you vote? A. I waited until about half-past three or four.

Q. Why did you wait until that time? A. Because I felt like it.

- Q. Why did you wait until that time if you were there at half-past six?
A. I had from six to seven to vote.
- Q. Didn't you wait to see what you could get? A. No, sir.
- Q. You went there at half-past six in the morning? A. Yes, sir.
- Q. And you had a splendid chance to vote? A. Yes, sir; if I had wanted to.
- Q. And you delayed until the afternoon? A. Yes, sir.
- Q. Without any object? A. Yes, sir; without any object.
- Q. And that was all you got up there? A. Yes, sir.
- Q. That was \$5? A. Yes, sir.
- Q. Who paid you that? A. The County Committee.
- Q. What County Committee? A. Down Kearny Street.
- Q. Who paid you that? A. I don't know the party's name.
- Q. How did you get it? A. I showed him the receipt I got from Jones.
- Q. What did Jones say when he told you to go to work? A. There was another party brought him up, and he asked me if I wanted a job and I said yes.
- Q. Who brought him? A. Mr. McPherson.
- Q. Where does he live? A. Up on Filbert Street.
- Q. You never spoke to him before? A. I worked in the same shop before, and I asked him if he could get me a job that day, and he said he would try.
- Q. Do you know Mike Smith? A. No, sir.
- Q. How did you come to come out here? A. Parties asked me to come out, and I thought I might as well come out to-day, and they might subpoena me.
- Q. What parties asked you? A. Parties I am acquainted with.
- Q. What party? A. Mosey Lee.
- Q. Who is Mosey Lee? A. He is a friend of mine.
- Q. What does he do? A. I don't know.
- Q. He is a pretty good friend of your's if you don't know anything about him. A. I used to keep company with him when I was small.
- Q. And he asked you to come out here, did he? A. He heard about my knowing something about it, and he asked me to come, and I come.
- Q. How did he know? A. I don't know.
- Q. Did he hear it? A. I don't know. I suppose I might have told somebody about it, and the party told him.
- Q. Who did you tell? A. I told McPherson.
- Q. When did you tell McPherson? A. Right after the fellow offered me the money.
- Q. The same day? A. The same day.
- Q. You are sure of that? A. Yes, sir.
- Q. Just as sure as of anything else you have testified to? A. Yes, sir.
- Q. What did McPherson say? A. He only laughed.
- Q. He thought it was a joke? A. Yes, sir.
- Q. And you didn't intend to buy anybody? A. No, sir.
- Q. And you thought he was fooling, and didn't mean it? A. No; I thought he meant it, the way he talked.
- Q. Didn't you think it was a joke? A. No, sir.
- Q. You said so a little while ago. If a man asked you to vote for money, you knew that was against the law, didn't you? A. Yes, sir.
- Q. You knew it was a State Prison offense? A. Yes, sir.
- Q. Why didn't you report it to the police? A. I didn't think it was any use; it wouldn't benefit me any.

Q. And you went right around and told McPherson? A. He just happened to be with me, and I told him of it.

Q. Did you ever think that would benefit you? A. No, sir.

Q. Did you tell Mosey about it? A. No, sir; I didn't.

Q. Did you tell anybody else about it? A. I might have told six or seven about it. A lot of Republicans and Democrats were talking there together, and we got off such talk.

Q. Then if Mosey heard it he got it from some person down in the factory? A. Yes, sir.

Q. And you are sure you told it to McPherson on the day of election? A. Yes, sir.

Q. You are sure Mosey did not tell you what to testify when you came here? A. Yes, sir.

Q. You have been offered no money? A. No, sir.

Q. Nor any place? A. No, sir; I have been offered no place.

Q. Mr. Banks offered you nothing? A. No, sir.

Q. And Mosey didn't offer you anything? A. No, sir.

Q. And Mosey and you have been friends for years, and you renewed your acquaintance with him? A. We were always friends, and we happened to meet once in awhile.

Q. You swear you don't know what Mosey does now? A. No, sir.

Q. You are sure of that? A. Sure of it.

F. R. FOWLER.

A witness called on behalf of respondent, was duly sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Mr. Fowler, were you present in Judge Wilson's Court at the time of the recount for the office of Recorder and Superior Judge was going on? Answer—Yes, sir.

Q. Before that had you heard any reports about the Seventh Precinct of the Thirty-third Assembly District? A. Yes, sir.

Q. With regard to the Senatorial fight? A. Yes, sir. I heard that there were forty or fifty scratches on the Democratic ticket where Mr. Sullivan's name was scratched, and no name put opposite to it. They said there were forty or fifty of them.

Q. What precinct was that? A. The Seventh of the Thirty-third.

Q. Did you take off the tally there? A. Yes, sir. The Bailiff and I talked about it, and I said I didn't think such a thing would happen, and he said: "Let us take it off for fun, for our own sake," so when they were counting the ballots, we stood right there and counted the scratches.

Q. How many scratches were there? A. Seven.

Q. That is, scratches where Mr. Sullivan's name was erased and no one's else substituted? A. Seven scratches.

Q. And the Bailiff and yourself made that? A. Yes, sir; we agreed on it.

Q. Then if anybody else testified that there were—if Mr. Maxwell testified as follows: "Q. What was it? A. I noticed a good many Democratic tickets come out straight. There were names had one or two scratches on them, and I noticed a waving line and the name of Mr. Sullivan facing, and it was not a straight line, but a waving line, and sometimes it went

through to the others. Q. How often did it occur? A. To the best of my knowledge, forty or fifty times." A. I didn't see it forty or fifty times. We counted it.

Q. I ask you if Mr. Maxwell or anybody else testifies in that way, then they must have been mistaken in the number of times that Mr. Sullivan's name was scratched? A. In that precinct, they were.

Q. I talk about the Seventh of the Thirty-third. A. That is it; that is the only one I looked at at all, and the way I came to look at it was out of curiosity.

Q. And if Mr. Dunn or anybody else testified that in the Seventh Precinct of the Thirty-third District, Mr. Sullivan's name was scratched about thirty times with the pencil, and no one's name was substituted, is it not correct? A. No; it was seven times, and we counted and agreed on it afterward.

Q. You were the Deputy Registrar? A. Yes, sir.

Q. Who was the other gentleman that made this tally with you? A. Mr. Magner.

Q. He was Deputy Sheriff? A. Yes, sir.

Q. And your tallies agreed? A. They agreed; yes, sir.

Q. And there were about seven scratches there? A. Yes, sir.

Cross Interrogatories.

By MR. CLUNIE: Mr. Fowler, you are sure Mr. Magner agreed with you, did he? A. Yes, sir.

Q. What caused you to do that? A. It was talked of, and I said I didn't believe anything of the kind.

Q. Who talked with you about it? A. I don't remember; four or five talked with me about it.

Q. And you paid particular attention to it? A. That is the only one I did look at, except afterwards I looked at something, and I had no object in it.

Q. Do you say you and Mr. Magner compared? A. Yes, sir.

Q. And if he states he did not agree with you, he is mistaken? A. Well, I don't think he can say that, because I think Mr. Burdett, the Clerk of the Court, heard him say that.

Q. If he and Mr. Dunn say that there were thirty or forty scratches, they are not correct? A. They were not in that Court at all. I didn't know anybody else that had taken it, or anything of that kind. I heard this remark had been made, and I didn't know it had been taken in the other Court.

Q. How do you know they got it? A. Somebody in the precinct, I supposed.

Q. You knew the ballots had not been changed at all, didn't you? A. Of course I knew that.

Q. You were in charge of that? A. Yes, sir.

Q. They were pretty busy up in Judge Wilson's Court. Wasn't your attention attracted there? A. No, sir; I just stood right there though.

By MR. DORN: As a matter of fact, you were not very busy, and you had nothing to do but to tie up the ballots? A. Yes, sir; that and to take care of them.

Q. And to see that they were not altered or changed? A. That is all.

MAX WARSCHAUER.

A witness called on behalf of respondent, was duly sworn, and testified as follows:

Direct Interrogatories:

By MR. DORN: Mr. Warschauer, did you take off any of the tallies for Senator in the Twenty-First Senatorial District? A. I took off one precinct: the Second of the Thirty-fourth.

Q. Have you got your tally here? A. No, sir; I have not.

Q. Refresh your memory as to the Assembly District. Is it the Second of the Thirty-fourth? A. Yes, sir; it is the Second of the Thirty-fourth.

Q. Did you try to tally what was made from the actual votes cast and shown there, with the official tally? A. Yes, sir.

Q. That precinct was the one concerning which Mr. Hawkins, the witness on the stand, has just been testifying, has he not—the Second of the Thirty-fourth? A. I don't know: I didn't hear what he said.

Q. Did you compare the result of your tally, as taken from the ballots cast, with the official tally, as announced? A. Yes, sir.

Q. What was the difference, if any? A. The difference was about sixteen votes.

Q. In what way? A. Mr. Banks gained six votes and Sullivan lost nine or ten; something like that. About sixteen votes there were.

Q. That is the difference that was made? A. Yes, sir.

Q. Were you in such a position that you could take that tally off accurately? A. Yes, pretty near; within one or two votes.

Q. Your position was such that you could take it off, so you could swear you couldn't have made a mistake in more than one or two votes? A. I think so; one or two votes is the highest.

Q. You think you didn't make any mistake at all? A. Yes, sir.

Q. And you are making allowance for a possible mistake? A. Yes, sir.

Q. And your allowance is to be made on the right side? A. Yes, sir.

Q. And your impression is that you made none? A. My impression is that I made none.

Q. Had you any interest in taking off a false tally? A. None.

Q. Or a tally that would give Mr. Sullivan less votes or Mr. Banks more? A. None.

Q. As a matter of fact, wasn't your tally taken off for the purpose of giving this information to Mr. Banks? A. Yes, sir.

Q. Wouldn't your purpose in giving honest information to yourself and Mr. Banks be to give the benefit of the doubt against Mr. Banks than in his favor? A. I don't know that.

Q. Suppose you had come to a ballot which you were uncertain about, and you had to put it down or omit it, and you didn't know whether it was Mr. Banks' or Mr. Sullivan's vote, what column would you have put it in? A. It would depend on what ticket it was. If Banks' name was on there, the chances are I would give it to Banks, and if Sullivan's name was on there, the chances are I would give it to Sullivan.

Cross Interrogatories.

By MR. CLUNIE: You were a Deputy Registrar of the city and county then, weren't you? A. No, sir; I was not. I was not working anywhere.

I was in the County Clerk's Office, and left to take part in the Russel-McIntyre count there.

Q. Did you take any other count there? A. I took the Phelps and Clunie.

Q. You were a professional counter there, weren't you? A. No, sir.

By MR. DORN: Who is your assistant in the count there? A. Mr. Clunie.

Q. Andy Clunie? A. Yes, sir.

By MR. CLUNIE: Mr. Clunie did not agree with you, did he? A. No, sir.

Q. What was the difference? A. I will not say it. The Clunie and Phelps fight has nothing to do with this.

Q. You say you stood in the same position to take this other one as you did the Clunie and Phelps, did you? A. I do.

Q. In the same position? A. No; I was where you were. That is a better place.

Q. What was the difference between the Phelps and Clunie tally? A. No; I will not tell the difference in the Phelps and Clunie.

Q. I want to show how reliable you are as a snap tallier. A. I refuse to answer the question.

THE COURT: You are instructed to answer the question.

MR. DORN: That is, if you can remember? A. I don't remember, then.

By MR. CLUNIE: Do you swear you don't remember? A. Yes, sir.

Q. Do you swear that positively? A. I don't remember.

Q. Do you remember how near you were to the official count in the Phelps-Clunie case? A. No, I don't.

Q. Do you swear to that? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Are you within one hundred of it? A. I can't swear to that.

Q. You don't remember how many you were of it? A. I don't remember how many I was within the Phelps-Clunie count.

Q. You swear positively to that? A. Yes, sir.

Q. What did you do with that count? A. I give it up next day that the count is over.

Q. Don't you know it was matter of impossibility to take that count accurately any place? A. There was never a difference in any one precinct of but one or two votes.

Q. Don't you know, as a matter of fact, it was impossible to take a snap tally correctly? A. No; it was not impossible.

Q. And you thought you got it right in this Sullivan-Banks case? A. I know I did within one or two votes.

Q. You think these other snap tallies are not correct? A. I do.

Q. You still think you were right? A. Yes, sir.

Q. There were three or four other people taking them? A. Yes, sir.

Q. And you think they were wrong? A. Yes, sir.

Q. Why did you think you were right and they were wrong? A. Because I had a better position to see the ballots.

Q. Who took them? A. In what contest do you mean?

Q. Any contest; just to show how reliable your figures are. A. In any other contest I took off one tally, and somebody else took off the other tally. Two parties took off the same tally.

Q. You took the Banks and Sullivan, didn't you? A. Yes, sir; we didn't compare figures, though.

Q. There was no other person took them at all? A. No, sir.

Q. And you did not compare figures? A. No.

Q. Do you think you might have made a mistake in one or two? A. I might have made a mistake of one or two.

Q. Why do you say one or two? A. They may have been a mistake, and put one tally down wrong, and it may never have occurred, and it may be exactly correct.

Q. You rather think it may be exactly right? A. Yes, sir.

Q. You have no prejudice against Mr. Sullivan, because he is a Democrat? A. No, sir; not at all.

Q. You never tried to give the Democrat any of the worse of it? A. I don't give him any of the worst of it in a snap tally.

Q. Didn't they tell you they were going to have you as a witness here? A. No, sir.

Q. You knew there was going to be a contest going on? A. If I had known it I would have brought my memorandums with me; I have got them over at the house.

Q. And you have not got them with you? A. No, sir.

Q. Did Mr. Banks ask you to take that? A. Yes; he asked me to take it.

Q. What reason did he give? A. He wanted to see what the actual vote was.

Q. Did he tell you he wanted it for the contest? A. No, sir.

Q. You knew there was going to be a contest? A. I knew there was going to be a contest, but I didn't know whether he wanted it for that or not.

Q. You are sure of that, are you? A. Sure of it.

Q. You are deputy now in what office? A. The Recorder's.

Q. And you swear you don't know the figures in the other contest? A. No, sir.

Q. Or within one hundred? A. No, sir.

Q. Or within two hundred? A. No, sir.

Q. Or within three hundred? A. I may remember within three hundred.

Q. What are the figures? A. I don't know.

Q. You know you are under them now, do you? A. Yes, sir.

Q. Don't you know you don't forget, but you won't state it? A. No, sir.

ROBERT W. DURÖSE.

A witness, called on behalf of respondent, and having been duly sworn, testified as follows:

Direct Interrogatories.

By MR. DORN: Mr. DuRose, where do you reside? Answer—No. 1117 Poplar Street, Oakland.

Q. How long have you lived there? A. Since Thanksgiving.

Q. Where did you live before that? A. No. 915½ Mission Street.

Q. On election day, where were you? A. I was in the Twenty-first District.

Q. Where were you the second night after election; on November seventh? A. In the Third of the Thirty-fourth.

Q. The Third Precinct of the Thirty-fourth Assembly District? A. Yes, sir.

Q. What were you doing there? A. Watching.

Q. Who for? A. The Republican party.

Q. You were there for the Republican County Committee, watching the count? A. Yes, sir.

Q. What, if anything, did you observe there with regard to the count? First let me ask you, who was calling while you were there? A. I don't know the gentleman's name; I know he is a Democrat.

Q. You inquired and found he was a Democratic? A. Yes, sir.

Q. And he was calling ballots? A. Yes, sir.

Q. Who were there? A. Captain Smith was in and out. He was there, and the rest were strangers to me.

Q. Did you see this gentleman there [indicating William Maxwell]? A. Yes, sir.

Q. Mr. Maxwell. Tell us how this Inspector, or whoever it was, called those ballots, and what he was doing? A. He was calling them off; he had the board slanting in his lap this way [indicating], with his hand over the ballot that way, and was calling off this way, with a lead pencil in his hand.

Q. And he had a lead pencil in his hand? A. Yes, sir.

Q. What, if anything, did you do? A. I spoke about it.

Q. What did you say? A. I said I didn't think it was a square deal.

Q. In what way didn't you think it was a square deal? A. I didn't believe it was right to be using a lead pencil.

Q. About how long did he continue to use a lead pencil in that way? A. Shortly after I spoke of it.

Q. You don't swear, and I don't understand that you did swear, that he marked any ballots? A. No, sir.

Q. You don't know whether he marked any or not? A. No, sir.

Q. You only know he had a pencil in one hand and the ballot in another, and he was moving it over from one to another. A. Yes, sir.

Q. And you protested against his using a lead pencil? A. Yes, sir.

Q. Did he stop it then? A. No, sir.

Q. Notwithstanding your protest he continued using the lead pencil? A. Yes, sir.

Q. What time of day was this? A. This was in the morning.

Q. What time? A. I couldn't tell exactly, but it was along early in the morning.

Q. About what time in the morning? Do you mean between twelve and six; or after six? A. Between twelve and six.

Q. It was what we call the morning watch, then? A. Yes, sir.

Q. As a matter of fact, that is the watch of the whole twenty-four hours at which the bystanders is reduced to the lowest, is it? A. I couldn't say.

Q. As a matter of fact, there are generally more people around the polls where the ballots are being counted from six o'clock in the morning until twelve in the day, and from twelve o'clock in the day until six o'clock at night, and from six o'clock at night until midnight, than there are between midnight and six in the morning? A. Yes; I think so.

Cross Interrogatories.

By MR. CLUNIE: Why do you think so? What makes you think so? A. Because most of the people are asleep.

Q. How do you know that they are? A. I don't suppose they stay up all night.

Q. This is only your supposition, then? A. Yes, sir.

Q. You are just guessing at this, aren't you? A. I didn't say I swore to it.

Q. You are trying to intimate that this man was doing something wrong, are you not? A. No, sir; I didn't intimate any such thing.

Q. Don't you know that that man didn't do anything wrong? A. No, sir; I won't swear that he did.

Q. Won't you swear that he did not? A. No, sir; I won't.

Q. You were there as a watcher? A. Yes, sir; I was there as a watcher.

Q. You saw the man with the lead pencil? A. Yes, sir.

Q. And you were looking at him all the time? A. No, sir; not all the time.

Q. You were hired to do that? A. No, sir; I was not hired to do that.

Q. What were you doing? A. I was there as a watcher.

Q. What does a watcher do? A. Well, watch.

Q. And you did not watch? A. Yes, sir; I watched.

Q. You would have seen him if he did anything? A. No, sir; I could not; because he had his hand over the ballots.

Q. You saw what he had. You could see that it was a lead pencil? A. I could see that it was a lead pencil.

Q. How far were you away from him? A. I guess about three or four feet.

Q. How long were you in that place? A. Five or six hours.

Q. And you don't know the man's name? A. No, sir.

Q. Did you ask anybody what his name was? A. No, sir.

Q. How do you know it was a Democrat that was doing this? A. When I first went in there was a recess, and the Clerk that sat opposite me I got talking with him, and I asked him who was calling off the ballots, and he didn't give me the name but he said he was a Democrat.

Q. Who was this Clerk you asked? A. I don't know his name either.

Q. You know whether he was a Democrat or not? A. By the way he talked I guess he was a Republican. I don't say he was, but I judge by the way he talked he was a Republican.

Q. Did you call his attention to the lead pencil? A. No, sir.

Q. You say you made a protest? A. Yes; I said I didn't think it was a square deal.

Q. Whom did you say that to? A. I said it to the man calling off.

Q. What did the man say? A. He didn't pay any attention to me.

Q. How long before he stopped it? A. A short time afterwards.

Q. After you came in, how long had he been using the pencil? A. After I came in he started in then: they started in to count then, and they were having a recess when I came in.

Q. This man was calling off? A. Yes, sir.

Q. And he had this pencil in his hand? A. Yes, sir.

Q. Which end did he have down? The sharp end? A. I couldn't say there was a sharp end up, or I couldn't say there was a sharp end down.

Q. Don't you know this man simply had the point of the pencil in his hand so you and the other men could see down? A. I don't know anything about it.

Q. You were looking at the ballots, weren't you? A. Yes, sir; what could I see of that?

Q. You could see it? A. No: I couldn't see much of it.

Q. He had a whole ballot? A. No, sir.

Q. Did you call his attention to that? A. No, sir.

Q. Why not? A. It wouldn't do any good, when I saw what he did when I spoke about the lead pencil.

Q. You saw that shortly afterwards he put the lead pencil down? A. Yes, sir. After he put it down, you could see your way clear.

Q. How long did he use that? How long was it after he started that you called his attention to it? A. I suppose about twenty minutes or so.

Q. How many ballots did he count? A. I wouldn't swear. It is about five, I guess.

Q. Then the whole fraud that could have been committed while he held this lead pencil was about five ballots? A. I don't say he had any opportunity to commit it.

Q. If he had wanted to do it, that was the time he would have done it, on those five ballots? A. I don't know. He might have been doing it long before I went in there.

Q. I can imagine just as well as you can. Tell us what he did when you were there? A. I told you.

Q. That is all he did—on five ballots? A. Yes, sir.

Q. Did you see the pencil move when he was calling? A. I saw the pencil move, but I couldn't say he was writing.

Q. You thought he might be writing on a ballot, and you were four feet away? A. I said three or four feet away.

Q. Which was it? A. I said it was three or four feet.

Q. Well, three feet, say. You could have come nearer, couldn't you? A. No; I couldn't.

Q. Why couldn't you? A. Because I had my head in between the shoulders of two men standing in front of me.

Q. Who were the men in front of you? A. I don't know.

Q. Did you ask? A. No, sir.

Q. Did you ask to have them let you in? A. No, sir.

Q. But you didn't see what he was doing with the lead pencil? A. I didn't see what he was doing with the lead pencil.

Q. And you didn't ask these people to let you get in and see? A. No, sir.

Q. Weren't there any Republicans down there besides you? A. No. And I know I relieved one man there, and as soon as I come down there he went home.

Q. Wasn't there any other Republican there? A. There was Captain Smith in and out.

Q. Did you tell Captain Smith about this lead pencil? A. No, sir.

Q. You know Captain Smith pretty well, don't you? A. No, sir.

Q. How did you know he was a captain? A. I have seen him at San Quentin.

Q. You knew he was a very prominent Republican, didn't you? A. I don't know as I did. I knew he has held several offices; I don't know he is a prominent Republican.

Q. How long have you known him? A. I have known him by sight a good many years.

Q. Did he come in while this man had the pencil? A. I think Captain Smith was sitting at the end of the table when this man had the lead pencil. I wouldn't swear positively whether he was in or not.

Q. You think, to the best of your knowledge, Captain Smith was there all of the time this man had the pencil? A. I wouldn't swear to that.

Q. What is your best knowledge on that? A. Captain Smith was in and out, and to my best recollection he was there. I am not sure.

Q. And Captain Smith saw that pencil, and he didn't make any objections? A. I don't know whether he did see it or not.

Q. Where was he sitting? A. At the end of the table.

Q. Is it a big table? A. It is a pretty long table.

Q. Is his eyesight bad? A. I don't know whether it is or not.

Q. Are you a relative of Mr. Banks? A. Yes, sir.

Q. Did you take a pretty active part in his fight? A. Yes, sir.

Q. What relation are you of his? A. Cousin.

Q. You didn't vote over in that district? A. No, sir.

Q. And you went up there to look out for his interests particularly, didn't you? A. Yes, sir.

Q. And you would have noticed if this man scratched Banks' name with a pencil? A. I couldn't see the names, I told you.

Q. You were a relative of his, and you went up and watched his interests, and you were a relative of his, and it would have been better for him if you had let some other man go? A. I don't know whether it would or not.

Q. Do you think it was helping him, if there was something wrong going on, as you thought, and you didn't stop it? A. I supposed if I didn't mention it, it would have continued.

Q. As a matter of fact, during the whole time you were there, do you think there was any fraud committed with that pencil? A. I couldn't say there was or was not.

Q. Do you know Mr. Buckley—this old gentleman there [indicating Mr. Buckley]? A. No, sir.

Q. He wasn't there during the time you were there at all? A. Not that I know of.

Q. Wouldn't you have known if he had been? A. I don't know. I never took any particular notice of any of them; they were strangers to me.

Q. You didn't notice who was there? A. No, sir. I noticed Captain Smith; that was about all. That was the only one I knew.

Q. And the only reason you say this man that was calling was a Democrat was because the Clerk told you? A. The Clerk told me.

Q. What kind of a looking young man was he? A. A smooth face young fellow.

Q. And you didn't hear his name all the time you were there? A. No, sir.

Q. Was his name Smith? A. I couldn't tell you. I told you I don't know his name.

Q. You never heard his name? A. I never heard his name; I don't remember hearing it.

Q. Did you hear of Swain? A. I couldn't tell you his name if you went over forty names.

Q. You went back and told Banks about this fraud, did you? A. No, sir.

Q. You did not tell him that? A. No, sir.

Q. How did you come to come out there? A. I have been out here since the contest has been going on.

Q. Every day? A. No, sir; the last four or five days, I suppose.

Q. What did you come out here for? A. What did a good many of the others come out for?

Q. What did they come out for? A. Just to listen and see what was going on.

Q. And you never told anybody about this before you went on the stand? A. Yes, sir; I told somebody.

Q. Who did you tell? A. I told about it the night afterwards.

Q. Who to? A. Several parties.

Q. Who? A. Up on the corner of Washington and Leavenworth.

Q. Who? A. The groceryman who keeps the place.

Q. You told him about it? A. Yes, sir.

Q. What was Mr. Smith doing while you were there? A. He was sitting there.

Q. There were no weapons around there? A. Yes, sir.

Q. Who had the weapons? A. Captain Smith was sitting in a chair with his foot upon a table, and he went to get off the chair to go out, and the pistol fell out of his pocket.

Q. Accidentally? A. Yes, sir.

Q. He didn't take it out? A. No, sir. It is not likely a man will lay his pistol down, and lay it on the back of the chair and walk out.

Q. That is the only reason he didn't do it, that you think it is not likely? A. I don't think so.

Q. Do you know Roddy Banks? A. Yes, sir.

Q. He is a relative of yours, too, is he? A. Yes, sir; he is a cousin of mine.

Q. Where did he live? A. He lives on Merchant Street, I think it is.

Q. Merchant and what? A. Between Kearny and Montgomery.

Q. He lives there, does he? A. Yes, sir.

Q. How long has he lived there? A. I don't know how long he has been there.

Q. Is it a month? A. I couldn't tell you.

Q. Is it two months? A. I have never been to his place.

Q. How do you know he lives there? A. I don't know. He has told me he lived there.

Q. When did he tell you? A. I have seen him down on Merchant Street several times.

Q. When did he tell you he lived there? A. Not more than two or three days ago.

Q. He told you he lived down on Merchant Street? A. Yes, not more than that.

Q. Ain't you pretty friendly with him? A. I haven't seen him for some time.

Q. How long? A. I used to meet him occasionally. Perhaps I would see him once in three or four months.

Q. Did you ever call on him? A. No, sir.

Q. You never went to see him? A. No, sir.

Q. You never called at his residence? A. No, sir. If I ever met him, I met him accidentally.

Q. Where did he reside before election? A. I couldn't tell you.

Q. You swear you don't know? A. I don't know.

Q. You don't know whether he lived down on Merchant Street? A. I told you I don't know. I only see him once in three or four months—perhaps five or six months.

By MR. DORN: At the time this occurrence took place which you have narrated, Mr. Maxwell, this gentleman here [indicating William Maxwell], was sitting there? A. Mr. Maxwell was sitting at the door.

Q. At the time you told him you objected to some one using the pencil over the ballots, this gentleman, Mr. Maxwell, was sitting there, was he? A. Sitting at the door.

Q. How far from the person who was using the pencil—or caller? A. Well, the table is in between Mr. Maxwell, and the caller was sitting on the other side of the table.

By MR. CLUNIE: If you had made this remark, Mr. Maxwell could have heard it, couldn't he? A. What?

Q. Asking the caller to stop? A. If I had made the remark?

Q. Maxwell heard you, didn't he? A. I don't know whether he did or not.

Q. He could have heard it? A. He could have heard me?

Q. And everybody in the room could have heard you? A. Yes, sir.

[Here the further hearing was continued until to-morrow morning, January 11, 1889, at 10 o'clock.]

NINTH DAY.

SAN FRANCISCO, CALIFORNIA,)
FRIDAY, January 11, 1889—10 o'clock A. M. }

M. A. SMITH.

A witness called on behalf of respondent, was duly sworn, and testified as follows:

. Redirect Interrogatories.

By MR. DORN: Where do you reside? Answer—No. 1010 Vallejo Street, San Francisco.

Q. How long have you lived there? A. About fourteen years.

Q. Were you in Court at the previous session of this case, when a gentleman named George Ryan, testified? A. Yes, sir.

Q. Did you hear his testimony? A. No, sir; I didn't hear his testimony. I was not in Court that day. I heard of the testimony.

Q. I read from page one hundred and thirty-four, from the testimony of George Ryan:

“Q. Do you know a gentleman by the name of Michael Smith? A. Yes, sir. Q. Captain Michael Smith? A. I know him very well. Q. You have known him for some time? A. Yes, sir. Q. Did you have any conversation with him prior to or since the election on the sixth of November, in regard to Mr. Banks and his efforts in his behalf with a convict in San Quentin? A. Yes, sir. Q. Who was present at that conversation? A. He and I. Q. There was nobody else there? A. No, sir. Q. Proceed. A. He and I had a conversation in the Fourth Precinct. There was a barroom adjoining; I think it was the ninth of November, the last day of the count of that precinct. I think it was the ninth of November.

“By Mr. Dorn: That was after the election? A. After the election. He told me that Mr. Sullivan's defeat was owing to his influence in San Quentin.”

Then there is an objection. Then Mr. Clunie asks this question: “Go on and tell the conversation. A. He and I had been together all the night before and all that day.” Then, after some other matters: “A. Owing to his influence at San Quentin, and I asked him how he accounted for that, and he said, ‘Don't you know that there is twenty-seven convicts in San Quentin that lived in this Senatorial District?’ and he said, ‘Those twenty-seven convicts befriended us. I was there, and I had letters from them to their friends, and went to their friends when I happened to be away from there, and sought their influence, which I thought I had.’”

Q. Did you have any such conversation as that with Mr. Ryan? A. No, sir; I never had any conversation of that kind with Mr. Ryan. I will

relate all that happened in this saloon with George Maxwell, who was on the stand in this case.

Q. Go on and tell us the conversation you had with him. A. I had no conversation about that with George Ryan.

Q. If Mr. Ryan testifies that you had a conversation with him in the barroom at that place named in his testimony, and that no one else was present, his testimony, then, is untrue in that regard? A. Yes, sir; his testimony is untrue.

Q. You never had a conversation at or about that time with Ryan, or concerning the subject named? A. He was in the barroom, I think, when I was talking with George Maxwell. There were several in there.

Q. But you had no conversation with Ryan alone? A. No, sir; I had no conversation with George Ryan alone. I don't know that I ever had a conversation with him alone in my life; I don't think I ever spoke to him about it.

Q. Just give us the conversation as it happened. A. With Maxwell?

Q. Did you ever have a conversation like that at all? A. I never had a conversation like that at all.

Q. And you never made any such statement as that to Ryan? A. I never made any such statement as that to Ryan.

Q. Were you in Court when Henry McLaughlin testified in this case? A. No, sir; I was not. I was not here the day McLaughlin testified. I came in afterwards, while Murray was testifying.

Q. I read from page two hundred and two, after some preliminary matters, the following: "Was the tall gentleman there" [meaning in the county jail.] "A. Yes, sir; the big man with the beard. He said his name was Mike Smith. Q. Did Smith and Murray have a talk? A. They had three or four different conversations. Q. Did you hear any of the conversations? A. A friend of mine was speaking to me. I heard the two of them conversing, and I heard Smith asking Murray if he had those letters burned up, and Murray said, 'They are all all right.' Like that."

Q. Did you ever have a conversation with Mr. James Murray in the city prison of this city and county in the presence of Henry McLaughlin? A. I suppose by relating the circumstances of the whole case I could tell.

Q. Just answer the question. A. There was no one present that I know of at all. I was standing at the end of the desk talking to Mr. Murray; Mr. Cohen, the prison keeper, was at the desk in the first conversation, writing, and Murray stood there talking to me. I never sat on the bench; I never was down on the bench at all. So McLaughlin was not there.

Q. At any conversation which you ever had with James Murray in the city prison, was this McLaughlin present? A. No, sir.

Q. Was he within hearing of the conversation? A. I don't know about that. I suppose the seat is as far as from here to that chair [indicating].

Q. About how far in feet? A. About five or six feet—may be four feet. I couldn't say.

Q. Did you have any conversation with James Murray in the city prison in which you asked him the question something like this, without pretending to repeat the exact language: "Have you got those letters burned up?" or "What have you done with those letters?" and he answered "They are all right"? A. No, sir.

Q. Did you ever, at the city prison, ask Murray anything about any letters at all? A. I will relate the conversation, and how I come to go there.

Q. Very well; just give us the whole business? A. I received a note from James Murray—I suppose it was maybe seven or eight or ten days

before he was in the city prison—telling me that there had been three parties calling at his house. Let me see what the note said. [Pausing.]

Q. Have you got the note? A. I don't know. I may have it, but I looked and haven't found it yet.

Q. Have you looked for it? A. Yes, sir. I may have torn it right up at the time; but I have not been able to find it.

Q. Just tell us what the conversation was? A. He said there had been some parties after his brothers and him about the hand he took in the Sullivan and Banks fight, and that he wanted to see me at 306 Lombard or Filbert Street, I don't know which; I think that was the number, 306 Lombard Street.

Q. Where did you get that note? A. It was left at the Mint Saloon, Commercial Street.

Q. Did you get any response to that? A. No, sir.

Q. Come down to this conversation. What was the next thing? A. The next thing, I was going along Stockton Street and I met his brother—I think it is Charles Murray. I was with Mr. Banks at the time—and he said, "Jim is down in hock." And he says, "They are jobbing him." I said, "For what?" He says, "Well, the way us boys acted in this case of Banks," and he said, "There ain't anything in it, and he wants to see you." I said, "What is the charge against him?" He said, "I don't know; battery or something; I think there is an assault to rob against him now."

Q. Did you go down? A. I went down and he went on to tell me all about the case. He said, "There have been two or three parties here that want me to give up."

Q. Did he give you their names? A. Yes, sir: he told me Collins was one of them.

Q. What else? A. I think that is the only name he mentioned, was Collins.

Q. Did he say Sullivan had been down to see him? A. No, sir: he did not.

Q. Did he say Maxwell had been down to see him? A. No, sir: he did not.

Q. He did not mention the names? A. No, sir.

Q. Go on. A. He said: "They want me to produce the letter I sent over here." I said: "Whatever is in the letter, you can give it to them. There is nothing in there we care anything about." I said: "I never told you to write any letter." He says: "All right; I don't know whether I have got it or not." He then spoke to me about getting him bail, and I told him I couldn't do anything of that kind.

Q. You told him you couldn't do it? A. No, sir.

Q. Did you ask him if the letter was burned up? A. No, sir; I didn't say anything about the letter.

Q. To go back into the history of that letter: was that letter written at your request or did you have anything to do with the writing of it. A. No, sir; I never saw it. I will commence right now by saying that I never asked any convict over there to write any letter to any of their friends to support Banks or support Sullivan or support Banks against Sullivan.

Q. You never made any request of that kind? A. No, sir.

Q. Then any statement of that kind, that you did so, would be wholly untrue? A. Yes, sir.

Q. You are positive you never asked any convict at San Quentin to write any letters or interfere in any way with the Senatorial election in San Francisco, at the last election. A. No, sir; I never asked them to

write any letters, and I never knew there were any letters written, if there were any written.

Q. Do you know a man commonly called Yankee Sullivan? A. No, sir; I don't know him.

Q. Have you ever heard of him? A. I heard some talk that there was a man testified here by the name of Yankee Sullivan, but I don't know him and never saw him.

Q. Don't you know that the man is known about town by the name of Yankee Sullivan, and commonly known as such, is a convict, and that he is from San Quentin? A. I know there is such a fellow, but I was not here when he testified.

Q. There is a man named Yankee Sullivan who has been a convict at San Quentin? A. Yes, sir.

Q. But you didn't see him. A. I didn't see him either on or off the stand.

Q. Do you know any such man around town? A. There might be and I not know him.

Q. "Yankee Sullivan" is a nickname, isn't it? A. Yes, sir.

Q. It is a nickname which the man who bore it got over in San Quentin? A. I think he got it before he went over there.

Q. Do you know a gentleman by the name of George Maxwell? A. Yes, sir.

Q. How long have you known him? A. I have known George Maxwell a good many years.

Q. Did you have any conversation with Mr. George Maxwell on, I think, the evening of the eighth of November last? A. Yes, sir.

Q. At the Fourth Precinct of the Thirty-fourth Assembly District? A. Yes, sir.

Q. Did you at that time say that there were twenty-seven convicts who had lived in the Twenty-first Senatorial District, and that they had sent letters to their friends in the district, and that it had helped Banks to succeed, and that those letters had been sent through your instrumentality or request? A. I said there were letters sent, but I didn't say that I had them sent.

Q. As a matter of fact, you say you didn't have them sent? A. No, sir; I did not.

Q. Did you then pretend to fix any number of letters which had been sent, or do you know? A. I don't know the number of "cons" now in San Quentin that lived in that district. I couldn't tell probably within ten or fifteen of the number.

Q. Do you know the number that were there at the last election? A. No, sir; I do not.

Q. Do you know of any letters having been sent at all, except what you have heard in the testimony in this case? A. I am satisfied that there were letters sent, but I had nothing to do with them.

Q. Do you know that there were letters sent? A. I didn't see them.

Q. Then all you know is what you have heard? A. What I have heard.

Q. Just give us the conversation with Mr. George Maxwell. Tell us how it occurred and everything. A. I believe there was Mr. Rainey, and Mr. Denny Sullivan, drove up to the precinct—

Q. [Interrupting.] Who are Mr. Rainey, and Mr. Denny Sullivan? A. Denny Sullivan is one of the District Engineers, and Mr. Rainey is, I think, Superintendent of the engine.

Q. Then there were some of the firemen who were taking an interest in the fight in the Twenty-first Senatorial, were they? A. Well, they drove up there.

Q. They didn't drive up there to collect a bill, or to put out a fire, did they? A. No; they drove up in a buggy.

Q. They drove to the election precinct, and they drove as if they knew where it was, and as if they knew where they were going? A. Yes, sir; they were there, and I had just come to the precinct.

Q. Go on. A. Mr. Sullivan was there, and Mr. Banks was there, and quite a number. I guess there were fifteen or sixteen went in together and had a drink in the saloon.

Q. You were drinking with Mr. Sullivan, weren't you? A. I think we had three or four drinks. I don't know whether Mr. Sullivan treated or not. I believe I did, and I think Mr. Maxwell treated, and I know there were three or four drinks taken around there, and whether Mr. Sullivan treated at that time or not. I couldn't say. After we had two or three drinks they were all talking, and Mr. Maxwell and myself stood at the end of the billiard table, and we went on talking about what led up to the defeat of Mr. Sullivan and what led to the election of Banks. Mr. Maxwell was blaming some people for going back on him, and speaking about what led up to it. I gave my version of what I thought was the reason, and we spoke about several things there, and in it he said something about—he said, "You didn't lose anything on the convicts over there." I said, "I don't know whether I did or not." I said, "I will tell you one thing; you made a mistake in trying to get a pardon for somebody and you didn't get it; it didn't do you any good." I was speaking about this Murray boy. He said, "That is what a man gets; I did the best I could to get the pardon and I couldn't get it, and they thought, I suppose, I didn't try." That was what led up to this convict talk.

Q. And that was the conversation with regard to convicts, was it? A. Yes. Then I spoke about everything in general, and it was a general conversation.

Q. Did you say you had got twenty-seven convicts over there to write letters to their friends? A. No, sir.

Q. Did you say you had got one to write to his friends? A. No, sir, and I didn't understand Mr. Maxwell to say that when he was on the stand.

MR. CLUNIE: He is contradicting him all the way through. He has contradicted five or six already.

THE WITNESS: I heard his testimony, and it was pretty correct pretty near all the way through; and I don't think there was anything said about the number. He may have got that in his head by talking with some other people about the number. I will say that Mr. Maxwell testified very nearly what was said there.

MR. DORN: He testified as follows, after asking if there had been a conversation: "Q. On the eighth of what? A. On the eighth of November, two days after election, I believe, about eight o'clock, we were all in the Fourth Precinct of the Thirty-fourth, talking about the election, and it looked then like a victory for Mr. Banks; and we had virtually given up the fight for Mr. Sullivan, and were talking about the battle, and Mr. Smith and I got to talking about things, and about this fight, and he told me he thought he had got the best of us on one or two occasions, and that was that we had neglected some of the convicts over at the prison." I don't find it. A. I heard Mr. Maxwell's testimony. I don't remember him saying that.

Q. Afterwards from Mr. Clunie: "By Mr. Clunie: Q. Just go on and tell the conversation that occurred; what he told you about these convicts.

A. About the convicts; he told me in a general conversation that there was some twenty-seven people, I think, in the Penitentiary, that had friends and relatives in that Senatorial District, and that they were quite a factor in that fight, and that they had sent letters to their friends and relatives in that district, and that they had helped Banks considerably in his fight.

Q. Did he state who requested those convicts to send letters? A. No, sir."

A. I think there was some such conversation as that happened.

Q. Did you hear anything about twenty-seven convicts? A. I don't think I did; but still I would have had no reason to have said that number. I will say that if I had such a conversation as that with Mr. Maxwell, it was a general conversation there with Mr. Maxwell. I want to say this: There were a whole lot of things that led up. This conversation was not all in one breath after the other. There was a good deal of talk about the different people in these precincts, why they had went back on Mr. Sullivan.

Q. Mr. Maxwell said that? A. Yes, sir.

Q. What did he say about men going back on them? A. He said they were men that ought to have been his friends that were against him.

Q. Who did he name that were against him? A. I can't exactly call the names. I remember him calling to some people up on the hill that he claimed had gone back on him.

Q. Did he name those Murray boys and their relatives? A. Yes; there was some talk about it.

Q. Why did Maxwell say they ought to have been for him? A. I suppose he thought for trying to get a pardon for this boy, they ought to have been his friends.

Q. When you said Maxwell said his friends went back on him, Maxwell was not a candidate for any office, was he? A. No, sir.

Q. He was making Mr. Sullivan's fight over there? A. He was looked on as making his fight. He was a kind of Democratic Captain over there.

Q. You know Mr. Maxwell over there for years? A. Yes, sir; I have known Mr. Maxwell for years.

Q. As a matter of fact, Mr. Maxwell's especial and particular fight over there was for the election of Mr. Sullivan to the Senate, was it not? A. I suppose he was very much interested in Mr. Sullivan's fight. He is a member of the Confidence Club, and I understood that Mr. Sullivan was President of the Confidence Club, and naturally they were very much interested in the success of Mr. Sullivan for the Senate.

Q. You have occasionally met the assistant counsel for the contestant, William Maxwell, haven't you? A. I know him. I saw him through the election.

Q. Did you ever see William Maxwell up to the day of election and until after the votes were counted, that he was not talking Sullivan. A. I couldn't say whether I had or not. I have been in some saloon where perhaps Billy was on one or two occasions. He might have said something or other; I don't know. I know Maxwell would know it would be no use to speak Sullivan to me, the same way I know it would be no use to speak Banks to him.

Q. On the night of election, or rather on the sixth day of November, where were you? A. In the Sixth Precinct of the Thirty-fourth Assembly District.

Q. What were you doing there? A. I was looking out for the interest of the Republican ticket there.

- Q. Do you know a gentleman by the name of Chadwick? A. Yes, sir.
- Q. Did you see him around that precinct on that night? A. Yes, sir.
- Q. Do you know a gentleman by the name of R. J. Bellingham, who testified here yesterday? A. Yes, sir.
- Q. Did you see him around there? A. Yes, sir.
- Q. Who was the Chief Inspector? I will designate him so. I want to know who the Inspector was, and who the additional Inspector was, if you know. A. Bellingham was an election officer, John L. Durkee was an election officer. Mr. Nixon was an election officer, and Mr. Doucher was an election officer.
- Q. What time did you go there? A. I was there after the polls closed.
- Q. How long did you stay? A. I stayed all night at that precinct.
- Q. What time did you leave? A. About six o'clock next morning—between six and seven.
- Q. Between the hour of twelve o'clock at night and six o'clock in the morning, who called the ballots? A. Mr. Bellingham.
- Q. Were you present in Court yesterday when Mr. Bellingham was on the stand? A. Yes, sir.
- Q. Did you hear his testimony with regard to that matter? A. Yes, sir.
- Q. How is that testimony with regard to being true or false? A. It is true.
- Q. In respect of the person who called the ballots out or the name? A. That is true.
- Q. Just tell me who did actually call the ballots, and who was in charge of the polls from twelve at midnight until after six in the morning? A. After they put their initials on the back of the ballots Mr. Durkee called them, starting in from the first of the night; then Mr. Bellingham called off and then Mr. Durkee called again in the morning.
- Q. Do you remember at any time between midnight and six o'clock in the morning, Mr. Bellingham going out of the room for a few minutes? A. I will relate that circumstance just as it happened. Mr. Bellingham got up to go out of the room, and about that time Chadwick, who was a United States Supervisor of Election, sat in the chair to count, and Stephen Potter objected to his reading the ballots, and I sided with Potter and said he had no right to count; that he was a United States Supervisor; then the young man who was a Clerk up there—
- Q. Before passing from that, had Chadwick counted any ballots? A. No; he had not counted a ballot—not one ballot.
- Q. Then he got up from the chair? A. Yes, sir.
- Q. Did he occupy that chair at any other time between midnight and six in the morning? A. Not between midnight and six in the morning. That is, he did not sit down to count the ballots. I don't know whether they changed chairs or not. Then there was a witness here who was a Clerk—Conway—he went to read, and Mr. Potter objected to him, and while the objection was going on, Bellingham came in and sat down and commenced to count.
- Q. Then neither Conway nor Chadwick counted or called any ballots? A. No, sir.
- Q. Or handled any? A. I know they didn't count; whether they handed them out of the box at any time—I am satisfied that Mr. Doucher handed out all the ballots.
- Q. At any time between the closing of the polls and six o'clock the next morning, did Mr. Chadwick call any number of ballots, or did he call a single ballot? A. No, sir.

Q. Did Mr. Chadwick sit down in the caller's chair and take a gold pen or pencil between his fingers and mark off the office County Clerk, and Sheriff, and Senator, and some three or four more on the Democratic ballots, to the number of twenty-six? A. No, sir; nor he didn't read off nor mark off one.

Q. If he had read or marked a ballot, you would have seen it, would you? A. Yes, sir; I was there to look out for that.

Q. This gentleman you mentioned, Stephen Potter, who is he? A. He is Official Reporter of Judge Levy's Court, and was there in the interest of the Democratic party, as I understood it.

Q. You were looking out for the Republican party, and Stephen Potter was looking out for the Democratic party; and if anything of that kind had occurred, you would have seen it? A. Yes, sir.

Q. Did Mr. Potter go away between midnight and six o'clock in the morning? A. He went away.

Q. What time? A. I cannot specify. Then Charles McCarthy was there.

Q. When Potter left, Charles McCarthy took his place? A. McCarthy was there the whole evening; but when Potter left, he took his place.

Q. What time did Potter leave? A. I don't know whether it was four or five or six.

Q. Did he leave at three? A. I am not positive.

Q. When he left, did he come back? A. I don't know. I saw him there again, but I forget whether it was after daylight or not; but Charley McCarthy was there.

Q. Whatever time Potter went away, McCarthy was there? A. Yes, sir.

Q. Who was McCarthy? A. Charles McCarthy is now Guard in the House of Correction.

Q. What was he there for? A. I understood he was looking out in the interests of the Democratic party.

Q. He was a Democrat? A. Yes, sir.

Q. And he and Potter were there together looking out for the interests of the Democratic party, and both of them never went away? A. No, sir. Furthermore, in the Fifth of the Thirty-fourth it never varied any in all the official counts in Patterson for Sheriff, Bonestell, or Russell. Two years ago it did not in the Siebe and the other contest.

Q. How did it turn out in the contest for Superior Judge, which has just been counted in Judge Wilson's Court? A. I was not up there at the time, but I understood that there was one ballot that was allowed by Judge Wilson that was not allowed by the election officers.

Q. And that is the only change? A. That is the only change.

Q. How did it come out for the office of Recorder? A. The same thing, I think.

Q. There was one ballot which had been rejected by the Board because "O. K." was written on the ballot? A. I don't know: I wasn't there.

Q. Something of that kind occurred? A. I heard so.

Q. And the ballot was counted? A. Yes, sir.

Q. And that made a change of one? A. That was what I understood.

Cross Interrogatories.

By MR. CLUNIE: You were up there watching all these times? A. Yes, sir; I have been up in that precinct a great number of years.

Q. You have watched all these counts, and you know just how they were had? A. I only tallied one precinct.

Q. Where did you tally? A. I tallied in Judge Wilson's Court; one precinct.

Q. You were up there at the time, that was the Fifth of the Thirty-fourth? A. Yes, sir.

Q. If Chadwick says he called off any ballots, he is wrong? A. He is wrong.

Q. Do you know he is mistaken? A. I know he is mistaken.

Q. You are sure he did not call off any at all? A. I will swear he did not call off any at all through the daytime or night I was there. I was in another precinct the next day.

Q. After the polls closed and when the vote was commenced to be counted, you were in the Fifth of the Thirty-fourth? A. Yes, sir.

Q. You were not in the other precincts? A. No, sir.

Q. Didn't another young man testify you were down in the Third of the Thirty-fourth? A. That was the second night.

Q. You were there then, weren't you? A. No, sir. The counting was done in the Fifth of the Thirty-fourth at that time. I was not there through the day the next day at all.

Q. You know you went down to the Third of the Thirty-fourth. A. Yes, sir.

Q. You heard this young man testify, did you? A. Yes, sir.

Q. You were there during the time of the count that night a long time? A. I was there.

Q. You did not go there for fun, did you? A. I went down in the interest of the ticket.

Q. You were pretty sleepy, and you didn't go down for fun? A. No; there were other watchers there.

Q. But you were there watching, too? A. Yes, sir; I was around there.

Q. You know this young man that was on the stand, Mr. DuRose? A. Yes, sir.

Q. You heard his testimony? A. Yes, sir.

Q. About somebody having a pencil in their hand? Did that occur? A. Just as they commenced to count there was a gentleman there, and I don't think they had counted a ballot then, and he had a pencil in his hand, and DuRose objected to his having any pencil, and he put the pencil in his pocket.

Q. Then Mr. DuRose was wrong when he said he used the pencil? A. Yes, sir.

Q. Then you don't think he used it marking the ballots? A. I don't think there was any counted when he had that. I am satisfied in my own mind they hadn't counted any ballots, because he said something about it, and this man back to him, and there was a few words, and I think George Maxwell and myself were talking at the door, and we stepped in there and the pencil was put up, and there was nothing more done about it.

Q. You will swear that there was nothing wrong done with that pencil? A. Yes; I will swear that there was nothing wrong done with that pencil at that time.

Q. Then you swear Mr. DuRose's testimony was wrong when he said he used the pencil in counting four or five ballots? A. When he first spoke to him he might have made a mistake in counting off something wrong, and maybe Mr. DuRose made a mistake.

Q. You said he didn't use it on the ballots? A. I said they hadn't started to count off any ballots. They might have counted an elector.

Q. Didn't you say you were there and saw it? A. I said George Maxwell and myself were there, standing at the door.

Q. Wasn't William Maxwell there, too? A. I think William Maxwell and Hussey were there, because Maxwell was in and out.

Q. You don't know that he was not there, as a matter of fact, do you—William Maxwell? A. I don't remember whether he was there at that time or not.

Q. Who was standing by the man that was reading the ballots? A. I think Mr. Hussey was looking out for the Democratic end of it, and I think Mr. DuRose was looking out for the Republicans there.

Q. Don't you know that Mr. Buckley was there? A. He had gone home at that time.

Q. You are sure of that? A. Yes, sir; positive that he went home about that time. He went home a little after twelve o'clock.

Q. You say you saw Rainey and George Maxwell up in this precinct? A. Yes, sir.

Q. You thought that was queer for them to be up there? A. No, sir, I didn't think so.

Q. You knew they were connected with the Fire Department? A. Yes, sir.

Q. Did you think that was out of place? A. No, sir. I think Maxwell had a right there and Rainey had a right there.

Q. During the campaign, did you see Maxwell around? A. Yes, sir.

Q. Did you think that was wrong? A. No, sir.

Q. You knew he was a public official, didn't you? A. Yes, sir.

Q. You didn't think that was wrong for a public official to do that, did you? A. I think a public official has a right to look out for his interest the same as any other person.

Q. Then you don't think it is anything wrong for a public official to take an interest in politics? A. To take an interest in politics?

Q. You were interested in Mr. Banks' fight, weren't you? A. Yes, sir.

Q. During this campaign, where were you; what was your business? A. I was Chief Turnkey at the State Prison.

Q. Where is that? A. San Quentin.

Q. In Marin County? A. Yes, sir.

Q. And you took quite an interest in the fight? A. Yes, sir; I took quite an interest in the ticket.

Q. You didn't take any particular interest in Mr. Banks' fight? A. Yes, sir; I would get votes for Banks, and I would get votes for every other Republican that I could.

Q. Don't you know you took a little bit more interest in Mr. Banks than you did in any other Republican? A. No, sir; I don't think so.

Q. Didn't you ask people to vote for Mr. Banks that you did not ask to vote for the Republican ticket? A. Yes, sir; I might have done that, and to vote for Davies, and for Laumeister. If I was talking to a Democrat there, and knew that he wanted to vote for his electoral ticket, and wanted to vote for one or two or three on my ticket, I did.

Q. Then you did take an interest in half a dozen men? A. I took an interest in the whole ticket.

Q. You asked them to vote for Banks and you also asked them to vote for who else? A. I asked them to vote for just as many as they would.

Q. Who did you begin with first? A. I suppose I asked for Congressmen first.

Q. Don't you think Mr. Morrow was able to take care of himself? A. No, sir; I was quite interested in Mr. Morrow.

Q. Didn't you ask everybody to vote for Mr. Banks? A. I may have.

Q. Don't you know, as a matter of fact, you were taking a personal interest in Mr. Banks' fight? A. I was taking a personal interest in the whole ticket.

Q. Were you taking what we call a particular interest in Mr. Banks? A. I wanted to see Mr. Banks elected; yes, sir.

Q. And you wanted to help him all you could? A. Yes, sir.

Q. At this time you were Captain over there at San Quentin? A. Yes, sir.

Q. You were not drawing your salary over there while you were here, were you? A. Yes, sir.

Q. You were here, in fact? A. I never was away three days at a time except on election. I was here and there.

Q. You were away once three days? A. Yes, sir; I was here before election and went over there and come back.

Q. Election day you were here three days? A. Yes, sir.

Q. What are the duties of Turnkey? A. Locking and unlocking the doors and letting the prisoners out.

Q. Do the rules of the prison allow them to go away? A. I had two assistants there, under the law.

Q. Under the law and under the rule you are allowed to go away from San Quentin, to come over here, and take an interest in politics, and come over here and stay three or four days at a time? A. I will state now that there are some Democrats there that did the same thing.

Q. Now you want to ring the Democrats in? A. The Warden of the prison did not prevent either side.

Q. Is there a rule of that kind? A. No, sir; there is no rule.

Q. Isn't there, as a fact, a rule preventing officers? A. No, sir; you make application to the Warden for a leave of absence.

Q. And you made the application every day? A. Yes, sir.

Q. And you came over every time? A. Yes, sir.

Q. Did you talk with the Commissioners about that? A. I never talked with them.

Q. Do the Commissioners know when and how often the officers are absent? A. I suppose if they look over the record they will see the days they were absent.

Q. Is there such a record? A. Yes, sir.

Q. Don't you know they never look over that? A. They should.

Q. Don't you know they never do? A. I don't know. I know the Captain of the Guard generally marked down.

Q. Didn't you examine the record over there, to see it? A. No, sir.

Q. Didn't he make an exception in your case? A. No, sir. When I wanted to come over here I always went to the Warden. I told him I wanted to come over to the city, and I would be back this afternoon or tomorrow, and he said it was all right.

Q. Do they require you to write out an application when you want to go away? A. No, sir.

Q. Don't all the officers have to do that? A. The Guards do.

Q. No other officers? A. No, sir.

Q. What other officers go away without filing an application? A. The Deputy Warden.

Q. Who is that? A. Benjamin Chambers.

Q. Who else? A. Dr. Durant, the druggist.

Q. Who else? A. Mr. Fish.

Q. Who else? A. George W. Adams, the agent.

Q. What other officers go away without asking? A. Capt. Chambers.

Q. Any others? A. Those officers never write out any application; only inform the Warden.

Q. Are you the only Captain that is over there except this Captain Chambers? A. I don't know as any are Captains.

Q. You are called the Captain, are you not? A. Yes, sir.

Q. That is where you get your title from, isn't it? A. Yes, sir.

Q. Ain't you called Captain of the Guard there? A. No, sir; I am not.

Q. What do they call you? A. Captain of the Yard.

Q. Then there is a Captain of the Guard, is there? A. Yes, sir.

Q. What other Captain is there? A. I believe there is a Captain of the Night-watch and Sergeant of the Night-watch.

Q. Do these other officers go away without asking? A. No, sir.

Q. They never file an application? A. No, sir; I think they never file applications over the Captain and Deputy Warden and the druggist.

Q. Who is the Warden? A. General McComb.

Q. You went to General McComb and told him you wanted to go over to San Francisco, and told him you wanted to take an interest in Mr. Banks' fight? A. No, sir.

Q. And he never asked you what you wanted? A. No, sir.

Q. And he raised no objection? A. No, sir; he did not.

Q. Did you ever tell him you were going over to take an interest in politics? A. No, sir.

Q. Did you ever tell him your friend Banks was running for Senator? A. No, sir.

Q. You never mentioned anything about that? A. No, sir.

Q. You never mentioned that your friend Banks was running for Senator? A. I don't know. I may have.

Q. And he never wanted to know what you were doing over here? A. No, sir.

Q. Don't you know he did know that? A. He may have known I was in politics.

Q. As a matter of fact, don't you know he knew that, and that you were taking a hand in politics here? A. As a matter of fact, I suppose he knew I was taking a part in politics here.

Q. You testified in your direct examination, as I understand it, that you knew nothing about these letters? A. Oh, no; I didn't say that I did not.

Q. I understood it that way? A. No; I said I never had any of them sent, and I never spoke to any of them to write them, nor I never saw any of them.

Q. Didn't you say you never knew anything about them? A. If I did, I made a mistake.

Q. If the record shows you said that, that was a mistake? A. That was a mistake and it was a slip of the tongue, that is all.

Q. Do you say you did not know about these letters? A. I may have known that there were some going.

Q. How did you know it? A. I might have heard it talked.

Q. Who did you hear talk it? A. I don't know now.

Q. You know how you found it out, don't you? A. I might have known there were people over there writing that were friends of mine, and I wouldn't prevent them.

Q. You wouldn't prevent them if they wrote what you wanted? A. No, sir; and I wouldn't have prevented them if they wrote for Sullivan. It would have went out just the same.

Q. It would have gone out just the same as these letters went out, would it? A. Yes, sir.

Q. Smuggled out? A. I don't know whether any of them were smuggled out.

Q. Don't you know how these letters go out? A. No, sir.

Q. As a matter of fact, don't you know they go out through the office? A. No, sir.

Q. How are they sent out? A. They are given to a man that takes charge of them.

Q. Who is that? A. C. N. Fish. I want to say now that you can find out all about those letters from C. N. Fish.

Q. Mr. Fish goes around taking these letters? A. Yes, sir; any officer will take a letter up to the office.

Q. They are allowed to roam around the way they please, are they? A. No, sir.

Q. How do they get to the officers? A. The officers are outside the yard.

Q. When Mr. Fish takes a letter, what does he do? A. He has got an office in the yard, and the prisoners go and leave them in this office, and Mr. Fish mails them.

Q. Don't they require them to number the letters that go out there? A. No, sir.

Q. Don't you know they do? A. I don't think so. There is a book kept there with the letters, and who they are written to.

Q. Isn't every letter that goes out there numbered, and don't you know that that is the fact? A. No, sir; I never had anything to do with it.

Q. Isn't every convict required to send the letters out to the office? A. Yes, sir.

Q. And you don't know how they keep a record of it? A. I know they keep a record in the book there.

Q. And you don't know anything about it? A. I know they keep the book there, but I didn't pay any attention to it.

Q. You heard that letters of this kind were going out? A. Yes, sir.

Q. Didn't you say anything about it when you knew they were going out? A. No, sir. I knew Mr. Fish was usually taking a great interest in the other side of the house.

Q. He never stopped them? A. If he got anxious, I suppose he sent them. I don't know whether he did or not. I didn't write them.

Q. You heard these political letters were going out of the jail, didn't you? A. I didn't read them.

Q. Don't you know, as a matter of fact, Mr. Fish reads every letter that goes out of the jail? A. He does, or a convict that he has got under him.

Q. Who is that? A. Elliott.

Q. Elliott is quite a friend of yours, isn't he? A. I don't know as he is.

Q. Are you pretty friendly over there? A. With whom?

Q. With Elliott? A. No; I don't know as I am with any other prisoner.

Q. You are entitled, as an officer, to have a man run round as a sort of trusty for you, are you not? A. Yes, sir.

Q. And you selected one man to do that in particular, didn't you? A. No, sir.

Q. Did you select this man Elliott? A. No, sir.

Q. Do you swear you never put him in that position? A. No, sir; I never selected him at all.

Q. As a matter of fact, haven't you had Elliott running round for you? A. No, sir.

- Q. You are sure of that? A. Yes, sure of it.
- Q. Just as sure of that as of anything else you have testified to? A. I am, sir.
- Q. Do you know a man by the name of Griffin? A. A tailor?
- Q. I don't know. He is a convict over there, isn't he? A. Yes, sir; he is head tailor.
- Q. Are you pretty friendly with him? A. Yes, I am friendly with him.
- Q. He is a sort of trusty for you, isn't he? A. No, sir.
- Q. And you don't take any interest in him either? A. No, sir.
- Q. You never sent him around any? A. No, sir; his business is in the tailor shop.
- Q. Do you know what kind of an interest he took in politics this time? A. I don't know as he took any.
- Q. He never told you what interest he was taking? A. No, sir.
- Q. You and he never talked about politics? A. No, sir; I don't think I ever mentioned politics.
- Q. Do you know whether you did or not? A. I don't remember ever mentioning politics, because I didn't go into the tailor shop over once a week.
- Q. Didn't you meet him out of the tailor shop? A. No, sir. I might have met him in the yard.
- Q. Didn't you and he have several talks in the yard? A. No, sir.
- Q. Didn't you talk politics in the yard? A. No, sir.
- Q. Didn't you take Banks in the yard with you? A. No, sir.
- Q. Wasn't Griffin the man you sent around to get these letters from the convicts? A. No, sir.
- Q. You are sure of that? A. Yes, sir. I don't think Mr. Griffin is hardly ever out of the tailor shop during the hours he is unlocked.
- Q. Wasn't Griffin the one you sent to talk with these people? A. No, sir.
- Q. You are sure of that? A. Yes, sir.
- Q. You are not over there now, are you? A. No, sir.
- Q. How long since? A. I suppose a month.
- Q. Why did you go to see him a month ago? A. I was working there then.
- Q. Then you left there? A. Yes, sir.
- Q. Why did you come to leave? A. I resigned.
- Q. It was not on account of politics? A. No, sir.
- Q. You knew Mr. Griffin? A. Yes, sir.
- Q. You didn't ask him about these letters? A. No, sir.
- Q. How they come to get out? A. No, sir.
- Q. Tell us how you knew these letters come to go out. A. I cannot swear now.
- Q. Will you swear it was not Griffin? A. I wouldn't swear it was, and I wouldn't swear it was not.
- Q. You remember these conversations and you remember everything Mr. Dorn asked you as perfectly as can be, and I ask you about these now and you cannot remember? A. I cannot tell who I talked with about this.
- Q. Who was it? A. I can't tell. There were numbers of them.
- Q. It was a generally understood thing that these letters were going out? A. I think it was understood that a convict that had outside friends, they would send them out.
- Q. And it was an understood thing among the officers that these letters were going out? A. Well, I never read them. I suppose if a man was a

Democrat and had Democratic friends running here he would write them, and if he was a Republican he would write them for the Republicans.

Q. I just want to know about this case? A. I might say I didn't go to any of those parties to send letters.

Q. Do you swear Griffin was not the one who told you about these letters? A. I won't swear that.

Q. You won't? A. No, sir; I won't.

Q. Will you swear Mr. Griffin did not tell you he had gone and talked to people about Banks, and that these letters had been smuggled out by Captain Leale? A. Yes, sir; I swear no such thing was ever told me.

Q. Will you swear Captain Leale did not tell you any such thing as that? A. Yes, sir.

Q. You swear the letters went in the regular channel, do you? A. Yes, sir.

Q. Who is Captain Leale? A. He is a steamboat Captain that runs up the river and stops there.

Q. Isn't he one of the officers there? A. No, sir.

Q. He has free entrance there whenever he wants to? A. He hauls up the lumber and grain and everything they use, and he has free entrance there.

Q. He has free entrance in and out of the jail whenever he wants to go? A. Yes, he is free and he comes up there every second day, I think it is, and goes to the different officers and tells them what he has got for them.

Q. Other people don't do that, do they? A. No, sir.

Q. If I was to go up there, I couldn't do that, could I? A. Yes, I think you could.

Q. Do you think I could get out, too? A. Yes, sir. Any attorney, I expect, could go in there.

Q. Did you ever see Captain Leale talking with these convicts? A. Yes, sir; I must have seen him talking with them every day, for there were a number of them worked unloading his boat every second day.

Q. Did you see them talking with him about it? A. No, sir.

Q. Did you see him talking with people who wrote letters? A. No, sir.

Q. You don't know who wrote letters, do you? A. I suppose I heard who wrote them.

Q. Who did you hear wrote letters besides Mr. Murray? A. I can't tell now.

Q. You forget now, do you? A. Yes, sir. I cannot tell their names. I wouldn't have thought of Murray, perhaps, if my attention was not called to it.

Q. How many did you see writing them out? A. I can't tell.

Q. Were there twenty-seven, do you think? A. I don't know how many did go out.

Q. Did you say to Maxwell there were twenty-seven? A. I don't remember any number.

Q. You think it was said? A. I think Mr. Maxwell mentioned twenty-seven or thirty, something of that kind, and I might have said twenty-five or thirty. That was a kind of joking backwards and forwards between us.

Q. You are like the other witness that just joshed a good deal? A. You have been in politics enough to know that there is a good deal of joshing in politics.

Q. And you are just like the other witness that just joshed and went off? A. No, sir; I couldn't tell any numbers.

Q. You think Maxwell testified right? A. I am satisfied that Maxwell testified very correctly.

Q. And you are satisfied if Maxwell said you said it, that you said it?
A. I may have said it, but I don't remember it now. I don't remember the exact number.

A. What did you want to go down and see Mr. Murray in the jail for? What did you want to go down there for? What was your idea in going down there? A. I suppose he and his brothers have been very friendly to my side of the house, and from what his brother had said——

Q. [Interrupting.] What do you mean by your side of the house? A. The Republican side of the house.

Q. Just the general Republican ticket? A. Yes, sir.

Q. You don't mean Mr. Banks by that? A. Yes, I mean his side of the house.

Q. You knew about this contest when you went down there? A. Yes, sir; I knew about this contest when I went down there.

Q. You were engaged looking that up? A. Yes, sir.

Q. And ever since the contest came up they run to you and wanted you to get all the evidence you could get? A. I don't know as they did that.

Q. They went down and talked with you about it? A. Yes, sir.

Q. They went in the Mint Saloon and talked with you about it? A. Who?

Q. Banks. A. I don't know as he ever talked with me in the Mint Saloon. We are neighbors, and it may have been in my house and it may have been in his.

Q. In whose other house? A. It may have been in the saloon.

Q. Was it in anybody else's house? A. No, sir.

Q. It was not any house out on Sutter Street, was it? A. No, sir.

Q. And you never were out there? A. Oh, yes; I have been up there a number of times.

Q. You are sure it was not out there? A. No, sir.

Q. You are sure it was not out there you had it? A. No, sir; I am sure Mr. Banks and I never were out there since election.

Q. You didn't talk about this out there? A. I don't know as I ever spoke about this case out there. I know what you have reference to; but I have not talked politics or other business out to that house, because the gentleman has been quite sick. I have always called to see him as a friend, and not to talk politics.

Q. Before he got sick, did you and he talk about Mr. Banks at all? A. Banks' election?

Q. Yes, sir? A. Yes, sir.

Q. He took a pretty active interest in it, didn't he? A. Yes, I suppose I did.

Q. Did you ever take people up there to talk with him? A. To Higgins?

Q. Yes, sir. A. I don't remember. I may have introduced some in the last fifteen years.

Q. Did you take anybody up there and introduce them as a relative of Banks? A. I don't remember introducing anybody to him in the last six months. If I met him on the street, I may have introduced that gentleman with me.

Q. You don't say you did not? A. I say now I don't remember whether I did or not.

Q. Did you take anybody up in the Mint Saloon to meet him? A. No, sir.

Q. Are you sure of that? A. Yes, sir; because I never saw him but once at the Mint Saloon during the campaign.

Q. Are you acquainted with the Governor? A. Yes, sir.

Q. The Governor was down here about election time, wasn't he? A. I believe so.

Q. Where was he quartered? A. I believe he stops at the Occidental Hotel.

Q. Did you ever see him up there? A. No, sir.

Q. You never went up there? A. No, sir.

Q. Mr. Banks didn't take you up, did he? A. No, sir. I think I was acquainted with the Governor before Mr. Banks was.

Q. You didn't talk with him and Banks? A. No, sir.

Q. You never told anybody they might get a place if they would help Banks? A. No, sir; I hadn't the disposition of any patronage.

Q. And you didn't tell anybody you knew the man that had the disposal of it, and if they would stand in with Banks you would take them to see him? A. No, sir: I don't make any such promises.

Q. Didn't you tell them you would get them a place? A. No, sir: I don't do that kind of work. I know it is not the right way to work, because that is not the way to make politics.

Q. They don't make politics that way? A. I think the man that would do it would soon fall through—making promises that way—because he would never be able to carry them out.

Q. You went down to see Murray in the city prison because you thought he had been friendly to Banks? A. Yes, sir. I want to say that the brothers spoke to me and told me they were trying to job him, and, from what he told me about the case, he claimed they were trying to put up a job and scare him into saying I had done so and so.

Q. They were putting up a job on you? A. No: that was what he claimed. I said, "If it is just as you say, there is no trouble getting it dismissed," and he said, "I want to get bail," and I said I couldn't do anything about it.

Q. Tell us what the brothers said to you about it? You didn't testify in your direct examination that the brothers said anything about it. A. I don't remember the exact things. Mr. Banks was there, going along, and he told me the thing just about as it was.

Q. Banks was with you? A. Yes; he was right there.

Q. Banks was with you when you saw the Murray boys? A. Yes, sir.

Q. Did he talk with them about it going down? A. No, sir.

Q. Mr. Banks walked away and did not hear the conversation, did he? A. No, sir.

Q. Then Mr. Banks walked away? A. No: I think Murray came with us along on Stockton Street as we came out of the saloon.

Q. You and Banks came out of the saloon? A. Yes, sir.

Q. Give us the conversation between you and Banks and Murray? A. I cannot repeat that.

Q. Then if you have sworn to the conversation a little while ago you swore to something wrong, did you? A. I give you about the substance.

Q. Did Banks take any part in it? A. I don't remember now.

Q. That was another thing you forget about? A. I don't remember whether Banks spoke to him or he spoke to Banks or not. He might have done it and I might have paid but very little attention.

Q. You weren't paying any attention to what he said to Mr. Banks, or what Mr. Banks said to him? A. No, sir: I did not.

Q. Did Mr. Banks say: "You better go down and see him, Mr. Smith?" A. I can't remember that he did.

Q. And you cannot say now whether Mr. Banks said that might be a good idea to have that out here? Did Mr. Banks tell you it was a good

idea not to have those letters appear here? A. No, sir; he said nothing about it. I think those men that had friends over there had a right to send out letters if they wanted to, and I don't think there is anything wrong about it?

Q. Mr. Banks thought the same, did he? A. I suppose so.

Q. Did you and Banks talk about that being right? A. About what being right?

Q. About getting convicts to write letters from over there? A. No, sir.

Q. Did he ever talk with you about his brother-in-law, Captain Leale, getting these letters? A. No, sir.

Q. Then Mr. Banks never told you he knew this was going on? A. No, sir.

Q. After that conversation you went down there. What did you go down there for? A. On account of him writing me this letter.

Q. How long before that was that? A. I don't remember whether it was four or five days. One day I got it while I was living over there.

Q. You got it six or seven days before you met the second Murray? A. Yes, sir.

Q. And you have testified in the second examination that you didn't intend to go on that, and didn't pay any attention to it? A. Yes, sir.

Q. But you were not going down to the prison? A. No, sir.

Q. And he asked you to go to his house and you wouldn't do that? A. No, sir.

Q. Then you got the second letter and didn't pay any attention to it? A. No; I didn't go and talk with him. He came to me.

Q. Who did? A. Young Murray.

Q. What did you go down for? A. If the boy was in trouble and I could assist him, I suppose I would, if it was legitimate.

Q. Why did you want to assist him? Do you assist all the convicts there that get in trouble? A. I don't know. There is often these boys will get into trouble if they ain't guilty.

Q. Are you in the business of running around helping convicts? A. Oh, no.

Q. You didn't do that very often, did you? A. I may the same as other people; if I have people that are friends of mine and they ask me to do them a favor, I will do it.

Q. Then Murray was a friend of yours? A. I suppose so.

Q. What made you suppose that? A. I have always been very friendly with those fellows in that district.

Q. Those up in the district? A. Yes, sir.

Q. You have been friendly with him? A. I have been friendly with quite a number of them.

Q. You are quite sure it was not your friendship for Banks that induced you to go and get him out of jail? A. Yes. I don't say to get him out of jail.

Q. Get him out of trouble? A. I didn't say that. I went down to see what he wanted, and I might try to assist him. If he was guilty of any felony, I would not assist him. If a man was down for battery or vulgar language, I might assist him.

Q. You knew he was down there for battery? A. I believe there was a charge of battery.

Q. If you went down to help him out, it was only the assault and vulgar language? A. I don't say it was that.

Q. You wouldn't help him out if it was a felony, would you? A. If I investigated it and thought he was innocent.

- Q. And you went down to see Murray? A. Yes, sir.
- Q. How would you help him out? A. There is a great many ways.
- Q. Tell us how you intended to help him out? A. A man might be innocent of the charge and he might get his witnesses for him and do a great many things. There are a great many ways of assisting.
- Q. Murray has brothers, hasn't he? A. Yes, sir.
- Q. And you were going to go around getting witnesses? A. Oh, no.
- Q. Tell us how you were going to assist Murray. A. I cannot say. There are a great many ways of assisting him.
- Q. What was your idea of assisting him? A. I would have to know the case.
- Q. Supposing he said, "I am innocent of this?" A. I wasn't there at all.
- Q. Then what would you have done? A. Then I would have asked him where he was and who was with him.
- Q. What would you have done then? A. I would go and investigate that and see if he told the truth, and I would get the boys there as witnesses.
- Q. You would go and get witnesses? A. Yes, sir.
- Q. That was all you intended to do? A. Yes, sir.
- Q. You went down and saw Murray, did you? A. Yes, sir.
- Q. Did you tell him that you came in response to the letter? A. No, sir. I told him, "I saw your brother Charlie up on the street just now."
- Q. Go on and tell the conversation that occurred between yourself and Murray? A. I can't say all the conversation. I was standing close up to the Sergeant's desk there, and he mentioned Collins. I know, as one that he mentioned.
- Q. Matt. Collins? A. Oh, no.
- Q. Did he say what Collins? A. Yes, sir.
- Q. Why do put it on the other Collins? A. I said, "Is that that Collins that is up on the hill, that is a collector?" and he said "Yes." He said he had been down and told him: By —, that he had better turn up and do the square thing; that he had been against Sullivan, and now he better do the square thing.
- Q. Did you object to him doing that? A. I said, "What did he mean by doing the square thing?" And he said, "I don't know." He said "If I go and say you got me to write those letters over here." and I said, "Right here, did I ever ask you to write any letters or ever see any letters you wrote?" and he said no. I said, "Well, all I want you to do is come out there and tell the truth in this matter, and that is all I care about."
- Q. And that is all you said? A. Yes, sir.
- Q. And you didn't mention anything about the letter? A. I said, "There is nothing in that letter that I care anything about."
- Q. How do you know that? A. As far as I was concerned, I never read the letter and I never told him to write a letter.
- Q. How do you know there was nothing in the letter, then, that you cared about? A. If he has written the truth from there, I had nothing that I cared anything about.
- Q. You swore a minute ago you didn't remember the conversation. Now you recall it all, do you? A. You cannot, a week afterwards, call word for word; I didn't have an official reporter there to take every word.
- Q. You didn't have an official reporter there to take every word: therefore, you cannot tell what the conversation was? A. I will swear I never told him to tear up any letters.
- Q. How do you know you did not say that? A. I know I didn't say that.

Q. You say this was part of the conversation and you don't recollect?
A. I know I didn't say that.

Q. Why do you know it? A. I know too well. Why should I? I wouldn't say anything of that kind, I know.

Q. He just said you asked him where the letters were. There would be something wrong about that, would there? Don't you think you said that? A. I don't remember of saying that. But about destroying the letter, or tearing it up—

Q. [Interrupting.] He did not claim you said that. A. I understand that there was some one swore I told him to tear those letters up.

By MR. DORN: The testimony was, that Mr. Smith asked him if the letters were burned up, and he answered that they were all right.

THE WITNESS: I didn't ask him that.

MR. CLUNIE: You didn't ask him that? A. No, sir.

Q. This man says you simply asked him if they were burned up. A. Well, I didn't say that.

Q. And he didn't say they were all right? A. No, sir.

Q. And then Murray is wrong? Murray has made a statement that is not true, according to you, then? A. Yes, sir.

Q. McLaughlin, that was sitting there by him, made a statement that was not true also, did he? A. He was not there, and I know it, because I was standing at the end of the desk, and if any one says that he was sitting on the bench, it is not true.

Q. Maxwell is another one, isn't he? A. No: I say Maxwell in substance is about right. It might not have been word for word.

Q. But the substance is there? A. Yes, sir.

Q. Then Ryan is wrong? A. He may have been, but I never—I understand Ryan said I took him aside and related this conversation with him. That is what I understand, and I did not do that.

Q. What became of this letter? A. Which letter?

Q. The letter which this convict, Murray, wrote? A. I don't remember now.

Q. That was after this contest commenced, wasn't it? A. Yes, sir.

Q. Didn't you think that was a little funny, to destroy it? A. I don't think I did destroy it. I think I left it in some of my coat pockets, and I don't know where it is now.

Q. By MR. DORN: Didn't I ask you particularly to hunt that letter up? A. Yes, sir; you did.

By MR. CLUNIE: Of course, but you knew the hunt would be fruitless? A. There is no question about that. He says himself he wrote it.

Q. You hunted for it, did you? A. Yes, sir.

Q. When did you last see the letter? A. I don't remember seeing it at all since the day I got it.

Q. And you didn't think enough of it to take care of it? A. I thought I put it in my pocket.

Q. You are sure you did not lose it to keep from bringing it in here? A. No, sir; I will swear that.

Q. You say Mr. Maxwell had a special fight up there, and he says he did not. He was mistaken then? A. I don't know what you call a special fight, I was for the ticket.

Q. He says he was not for Mr. Sullivan any more than for any other candidate. If he says that, he says something that is wrong again? A. I wouldn't say it is wrong. I saw Maxwell a good deal during the campaign, and I suppose if he went to a man he knew to be a Republican, he wouldn't ask him to vote for Harrison, though he may have thought if he

could get him to vote for Sullivan or for any other candidate on the ticket, he would get him to do it.

Q. When you were over there, did you ever know of Captain Leale taking any letters out of the prison? A. No, sir; I did not.

Q. You are sure of that? A. Yes, sir.

Q. And you never had Griffin ask anybody about Banks and Sullivan? A. No, sir.

Q. You never had him running around getting letters from different convicts? A. If he did it, he did it on his own hook.

Q. Did he tell you he was doing it? A. No, sir. I never knew Griffin went among the convicts and I knew his business was down there in charge of the tailor shop, and his place was to work in the tailor shop.

Q. And you swear you did not know that every letter that comes out of the State prison at San Quentin has to be numbered? A. No, sir. I paid very little attention to the letter business, because that was Mr. Fish's business.

Q. Do you swear, as an officer, you don't know whether that was the rule over there? A. The number of letters?

Q. Yes, sir. A. No, sir.

Q. Don't you know, as a matter of fact, they require to take an official copy of every letter? A. I don't think they do. I think if it was done they took down the substance of the letter and who it is to.

Q. And you swear you don't know that was done? A. I think that was so.

Q. Isn't there something in the rules about it? A. I think there is something in the rules.

Q. What are the rules? A. I think the rules are that the letters are to go to the office, and whoever has charge of the letters will take a copy or a part of a copy; I know they don't take a copy, because they couldn't do that, and if they did, it would take forty or fifty clerks to do it.

Q. And the rules don't require them to do it? A. I think the rules require them to take the name, and who the letter is to, and about the substance of it.

Q. Don't you know that the kindness that Captain Leale extended to the convicts was to smuggle letters out of there? A. No, sir.

Q. You never knew that? A. I never knew that he took letters out for him.

Q. Where are you? A. I am chief jailor of the City and County of San Francisco.

Q. And you have been since this contest commenced? A. Yes, sir.

Q. Since the first of January? A. Yes, sir.

Q. And you draw your pay right along? A. Yes, sir.

Q. You drew your pay at San Quentin all the time? A. Yes, sir.

Q. And they don't require an affidavit that you worked all the time when you draw your pay? A. No, sir.

Q. And you are around hunting up witnesses for Mr. Banks? A. Since I have been in the jail I believe I have been one evening hunting up witnesses.

Q. If this gentleman testifies on the stand he met you two different occasions, he was wrong? A. One day was since I had been in the county jail about two days.

Q. And you have only been in the county jail one night? A. I don't stay there at night.

Q. You don't stay there at all, do you? A. Yes, sir.

Q. When? A. I was there this morning.

Q. How long? A. I was there from about half-past six until twenty minutes of ten.

Q. There is a rule that the jailer must stay there, isn't there? A. I am Chief Jailer, and I have four assistants.

Q. Are there no rules? A. I have charge of the men, and look after the detail of the men.

Q. Isn't there any rule as to when the Chief Jailer shall be at his office? A. No, sir, there is not; and there is not any under any of the Sheriffs.

Q. And you had no instructions from Mr. Laumeister when to stay at the jail? A. No, sir.

Q. Your duties are to stay there, to watch the jail, are they not? A. No, sir.

Q. What are your duties? A. To see that the men report on, look out and see that the men are fed there, and look out for the jail to be kept clean, and a great many duties.

Q. And you do that from six o'clock to twenty minutes to ten? A. Yes, sir.

Q. And you do all that? A. There are a great many other things.

Q. And you have been out hunting witnesses for Mr. Banks? A. I told you I saw some of them.

Q. You have been consulting with witnesses out here, haven't you? A. I may have talked with them.

Q. You have been going around here with Mr. Dorn considerably, haven't you? A. No, sir; I walked out with him one night.

Q. Have you been going around with Mr. Banks since this commenced looking for witnesses? A. I walked down from this hall, down town; I don't know as we have been to any places looking for witnesses.

Q. Have you ever gone over in the district with him since this commenced—since you became Chief Jailer? A. Since I have been Chief Jailer, I don't remember of meeting Mr. Banks over in the district unless it was at my house or at his house. Our families are intimate and we visit each other.

Q. And you cannot say how often you visited him? A. I may have met him every couple of nights.

Q. Don't you know you met him every night? A. No, sir.

Q. What nights did you meet? A. I know I didn't see him after I left the court last night.

Q. And that is the only night? A. Oh, no.

Q. What other night? A. I cannot say now. We are very friendly, and our families are friendly.

Redirect Interrogatories.

By MR. DORN: As a matter of fact you have only been in as Chief Jailer about three days? A. Since Monday.

Q. You went in office since the first of this week? A. Yes, sir. I was not out here that day.

Q. You have not drawn any pay as Chief Jailer then, have you? A. No, sir.

Q. Then you hope and expect to get your pay? A. Yes, sir.

Q. It is purely hypothetical? A. I suppose so.

Q. That is a supposition? A. That is a supposition.

Q. You said Mr. Fish, whose business it was to attend to letters over there, was a Democrat, didn't you? A. Yes, sir.

Q. You were asked where you were on election day. Do you know where Mr. Fish was on election day? A. Yes, sir.

Q. Where was he? A. He was in the Twenty-ninth Assembly District.

Q. Was he representing the Republican party? A. No, sir; he was assisting the Democratic party.

Q. And he was about as active there as you were over in the Twenty-first, probably? A. Yes, sir.

Q. You state the reason why you do not know and cannot state that letters that come out of the State's Prison are numbered is that it was never your business to look after them? A. No, sir.

Q. You have never had anything to do with the letters? A. No, sir.

Q. Your duties over there were different entirely? A. Yes, sir.

Q. You were never called on to have anything to do with the letters? A. No, sir.

Q. Therefore, your attention was never called to know what the situation was as to letters? A. No, sir.

Q. You were asked if it was proper for an officer at the State's Prison to be taking any interest in politics, and you said it was. Would there be any moral or political line to be drawn between the officers of the State's Prison taking any interest in politics, Secretary of the Corporation Yard, or the Secretary of the Board of Fire Commissioners? A. No, sir.

Q. Then if you took an interest in politics, you had as much right to be there as George Maxwell had? A. Yes, sir, and I suppose he had the same right as I had.

Q. How would it be about a clerk in the tax office? The principle would be about the same, would it not? A. I think so.

Recross Interrogatories.

By MR. CLUNIE: Do you know a man by the name of John Fargo? A. Yes, sir.

Q. Where did he live? A. He lives down at North Beach.

Q. He lives over in the twenty-first district, don't he? A. Yes, sir.

Q. You and he had a little talk about Mr. Banks; you know Mr. Banks, don't you? A. Yes, sir.

Q. Did you and he have a little talk about Mr. Banks? A. I may have; yes, sir.

Q. Don't you know whether you did or not? A. Yes, sir; we talked about Mr. Banks.

Q. What did you talk with him about Banks for? A. I have understood he was fighting him, and I met him on the street one day and asked him about it.

Q. What did you ask him? A. I asked him if he was fighting Banks.

Q. What did he say? A. He said no, he was not particularly fighting him.

Q. What did you say then? A. I said, "You have got no reason to fight him;" I said, "He has never done anything to you; if you claim to be a Republican you ought to support him."

Q. What did he say? A. He didn't say whether he would or not.

Q. And you did not say anything? A. No, sir.

Q. Did you tell John Fargo he could go with you to Mr. Higgins, and he could have his pick in the Sheriff's office, or any position for one hundred and twenty-five dollars per month, if he would get in and work for Banks? A. No, sir. Now, you want the conversation? You are speaking about Mr. Banks now, and that was before Mr. Banks was a Senatorial candidate.

Now Fargo was the Secretary of the Republican District Convention of the Twenty-First District. He came the night of the Senatorial contest to me at the corner, and he wanted to know if he would support Banks for the nomination, if I would promise him a place. I says, "What in hell! I aint running for office. I couldn't promise you a place." I said, "If you want to vote for him, vote for him, and if you don't, you needn't; we can get votes enough."

Q. You said "we?" A. Well, I might have said Banks.

Q. You said "we?" A. Well, I was satisfied he had delegates enough to nominate him.

Q. You said "we?" A. I might have said "we."

Q. Then if Mr. Fargo states that, he states what is untrue? A. He states what is untrue.

Q. You did not mention Mr. Higgins' name? A. No, sir.

Q. He had nothing to do with that then? A. I don't think Mr. Higgins knew half a dozen of the delegates from that district. I don't think he knew three of them from that district.

Q. He didn't know who was going to be nominated for Senator, did he? You don't think Mr. Higgins knew anything about it? A. Oh, yes, I do.

Q. Did you go up with Mr. Banks to see Mrs. Murray? A. No, sir.

Q. You are sure of that, are you? You recollect nothing of the kind at all? A. Yes, sir; I was at Murray's house before election, but I never was there with Banks.

Q. What did you want to go up there for? A. The old lady was over at the Prison. I wasn't there since this contest, or since the election. I was there once before the election.

Q. What did you go there for? A. I suppose I was there to dig up people, and to get votes.

Q. Did Murray tell you to go there? A. No, sir.

Q. Who told you to go there? A. The old lady herself; she was over one day at the prison.

Q. And if you did, it was in the presence of Murray himself, was it? A. I am not sure about that.

[Here a recess was taken until two o'clock P. M.]

AFTERNOON SESSION.

MR. DORN: While we are waiting for a witness, we have now come to the place where I deem it advisable to ask your Honors to issue a subpoena for the Registrar, and to bring with him the ballots which were cast in the Twenty-first Senatorial District. We desire to count the ballots, and submit the evidence to the Legislature of the actual vote which was cast. The pleadings which we have drawn, and which are on file here show and claim, at least, that the votes were not properly returned, and that the votes were fraudulently miscounted, and that as a result of the fraudulent miscount of the votes, Mr. Banks lost a great many votes which were cast for him, and to which he is legally entitled. If this evidence is introduced before the Legislature, it will be seen that Mr. Banks' vote was largely in excess of the amount which was credited to him in the official returns. In other words, we claim that a fraud was committed, and that the vote was fraudulently misrepresented. If there was such a fraud, if there was such a wrong done, if the public have been imposed upon in that manner, they are entitled to know it. If a Senator of the State of

California has been deprived of votes which have been cast for him in his district by the people, and of which he has been deprived, your honors and everybody else are alike interested, and I trust that the motion for the subpoena will be consented to, and that there will be no opposition, and that we will all join hands, if there is such a fraud as we believe, as we have sworn, and I therefore apply for a subpoena for your honors to issue to the Registrar to produce the ballots which were cast on the sixth day of November, eighteen hundred and eighty-eight, in the Twenty-first Senatorial District. I would like very much that Mr. Clunie will consent.

MR. CLUNIE: I am not trying your side of the case. I think it would be out of place for me to ask Mr. Dorn to get a subpoena. I suppose he will get if he is entitled to it.

MR. DORN: I may say that my reason for not applying for this subpoena before, is that I had thought he might consent to count these ballots, and it is apparent that Mr. Clunie does not intend to consent.

MR. CLUNIE: I want it to appear that I have not refused to consent at all. Mr. Dorn can put in his side of the case, and if I want to have the ballot counted, I will apply for a subpoena. As I said before, we were willing at the first of this contest to meet Mr. Banks half way, and I sent word to Mr. Banks proposing to have the ballots counted, and Mr. Banks sent word that he would not agree to have the ballots produced. I went ahead and produced my witnesses, and finished my case. Mr. Dorn has certainly my consent to get a subpoena, if he wants it.

THE COURT: Do you think we have any power to compel the Registrar to open the ballots, if he refuses to do so? Supposing we have not the power to order him to produce them?

MR. DORN: I believe your honors have the right to order him to produce them, the same as any other evidence.

THE COURT: But have we the right to order him to produce them?

MR. DORN: I believe your honors have the right to order him or anybody to produce any evidence of fraud.

THE COURT: Have you looked up the proposition?

MR. DORN: I have. What law can you show me which will authorize you to issue a subpoena for a man to produce his books?

THE COURT: I understand it to be your duty to assist the Court.

JUSTICE BOLAND: Our power to order books to be produced here would be as a Court, but here we are sitting as a commission simply, and only have the right to hear the testimony. Our rights as a Court and as a commission are two separate things.

MR. DORN: [Reads Section 277 of the Political Code.] That is one of the sections which provides the means by which the case of a contest for an officer of the Assembly or Senate can be tried. I now ask your honors to issue the subpoena, and I make the application in good faith, and I think it ought to be granted, and I think my reputation in the community is sufficient for your honors to know that.

THE COURT: [After waiting a few minutes.] Proceed with your witnesses, Mr. Dorn, and we will pass on this later.

MR. DORN: My further testimony depends on your honors' ruling entirely.

THE COURT: We are prepared to rule that we have no right to order the Registrar to open ballots, but we are not prepared to say whether we can subpoena him to bring them here.

MR. DORN: In order to make this matter comprehensive, I take it that it should appear in the subpoena, and I have made it to appear as follows:

In the Justices' Court of the City and County of San Francisco, New City Hall.

The People of the State of California to T. J. L. Smiley, Registrar of Voters of the City and County of San Francisco, State of California.

GREETING: We command you, and that all and singular business excuses being laid aside, you be and appear before the Hon. H. J. Stafford and James I. Boland, Justices of the Peace of the City and County of San Francisco, on the 11th day of January, A. D. 1889, at two o'clock P. M., at the office of said Justices, in the New City Hall, in said city and county, then and there to testify in a certain action and proceeding now pending before said Justices, wherein John J. Sullivan is plaintiff and contestant, and W. O. Banks is defendant and respondent, on the part of defendant and respondent, and you are further commanded to have with you at said time and place all the ballots now in your possession, or under your control, which were cast on November 6, 1888, in the Twenty-first Senatorial District of the State of California, for the purpose of counting said ballots for the office of Senator of said district. And for failure to attend, you will be deemed guilty of contempt of Court, and liable to pay all losses and damages sustained thereby to the party aggrieved.

Given under our hands this 11th day of January, A. D. 1889.

THE COURT: We will let this matter stand until to-morrow morning at ten o'clock.

MR. DORN: All my subsequent action depends upon the ruling of your honors, and that will necessitate an adjournment.

MR. CLUNIE: I object to these adjournments and continuances. Mr. Dorn has no right to ask for this, and I don't refuse to have a count, because I offered to do so once, and it was refused by Mr. Banks; but Mr. Dorn is doing this for the benefit of the newspapers. I will state that there was a case in San Mateo County where the Justices of the Peace and County Clerk, both Republicans, issued a subpoena of this kind—issued by the Justices—and the Clerk who there has charge of the ballots brought them in and opened the ballots, and the contestee appealed to the Superior Court, and Judge Head of the Superior Court of San Mateo County issued a writ of prohibition, and censured the Justices and the County Clerk very severely.

MR. DORN: I will stipulate now, then, that these ballots be counted.

THE COURT: Let it go upon the record, then, that the subpoena is refused on the ground that the law does not provide for the recounting of the ballots in a proceeding of this character before the Justices.

MR. CLUNIE: I would like to have it also appear that your honors do not refuse to issue any subpoena Mr. Dorn wants, but you do refuse to issue a subpoena specifying what you are going to do with the witness after you get him here.

THE COURT: Certainly.

MR. DORN: Now I ask that that subpoena be marked "Respondent's Exhibit C."

[The subpoena requested by counsel for respondent is here marked "Respondent's Exhibit C."]

THE COURT: If there is authority for us to do this, we can readily be mandamusd.

WILLIAM MAXWELL.

Recalled as a witness on behalf of respondent.

Direct Interrogatories.

By MR. DORN: Mr. Maxwell, you were present in Judge Finn's Court during the progress of the recount for the office of Mayor, were you not? A. Yes, sir.

Q. That was a proceeding commenced in the Superior Court, and conducted before Department 3 of the Superior Court? A. Yes, sir.

Q. In which a regular contest was had, and the votes being recounted for the office of Mayor? A. Yes, sir.

Q. Were you present when the Eighth Precinct of the Thirty-third Assembly District was counted? A. I was.

Q. Do you know whether any ballots were ordered counted by the Judge which had been rejected by the Precinct Board? A. I don't recollect whether that was the seventh or the eighth. It is one or the other.

Q. It was either the seventh or the eighth? A. Yes, sir.

Q. Can you refresh your memory in any way? A. I couldn't swear positively which it was.

Q. It was either the Seventh or Eighth Precinct of the Thirty-third District? A. Yes, sir.

[Here the reporter reads the fourth preceding question, as follows: "Do you know whether any ballots were ordered counted by the Judge which had been rejected by the Precinct Board?"] A. Yes, sir; I do.

Q. An order was made by Judge Finn, sitting in that election contest as Judge of the Court before whom it was pending, directing that certain ballots which had been rejected by the Precinct Board, be counted? A. Yes, sir.

Q. And tallied as legal votes? A. Yes, sir.

Q. How many? A. There were eight straight Republican ballots that had been rejected on account of their being too short; that I took particular notice of.

Q. You don't remember the others? A. No, sir. I think there were two or three Democratic ballots, but I ain't sure.

Q. But you are positive of this? A. I am positive that there were eight Republican ballots.

Q. That was one of the precincts in which Mr. Banks was a candidate, was it not? A. Yes, sir.

Q. If they were straight Republican tickets, then Mr. Banks' name would be on the ballots? A. They said they were straight Republican. I couldn't see the ballots.

Q. Didn't you see the ballots? A. No, sir. I saw the ballots in Judge Finn's count, but I did not see the face of them.

Cross Interrogatories.

By MR. CLUNIE: You were up in this Twenty-first Senatorial District considerable on election day, weren't you? A. I was in the Fifth Precinct.

Q. You know Mr. Hawkins, don't you? A. Yes, sir.

Q. You are the gentleman that Mr. Hawkins referred to as being present when some gentlemen came up and said they wanted to vote some names? A. I am.

Q. What precinct was that in? A. The Second of the Thirty-fourth.

Q. That occurred at a few minutes before seven o'clock on election night? A. Just before the polls closed.

Q. You heard his statement? A. Yes, sir.

Q. Were you in that precinct at that time? A. No, sir; I was not in that precinct during the day while the voting was going on.

Q. Just answer the question: Were you present at that time? A. No, sir.

Q. Were you present when any one came up that was not entitled to vote, and offered to vote for John J. Sullivan? A. No, sir.

Q. Did you see anything of that kind going on on that day? A. No, sir.

Q. You think that everything that Mr. Sullivan did was perfectly right and proper? A. Yes, sir.

Q. And you are one of the witnesses for Mr. Banks on this case? A. I am called now as a witness.

Q. You know Mr. Pistolesi, don't you? A. I do.

Q. You heard Mr. Pistolesi's statement that you were present when a man came up and voted by the name of Barry? A. Yes, sir.

Q. What precinct was that in? A. The Fourth of the Thirty-fourth.

Q. Is that true or not? A. No, sir.

Q. Were you present at that time? A. No, sir, I was not.

Q. Then that statement is false? A. That statement is false.

Q. That statement is false? A. Yes, sir.

Q. Were you present in any precinct in the Twenty-first Senatorial District when any person not entitled to vote came up to offer to vote, and you helped them in any way? A. No, sir.

Q. Did you do anything of that kind that day? A. No, sir. I was present once during the day in the Fourth Precinct of the Thirty-fourth District, and that was in the morning, and there was a man named Callahan came up in the Third Precinct, and he was under the influence of liquor, and he said he wanted to vote, and I took the register to give him his number, and I said, "Where do you live?" and he said, "I live in Jansen Street," and I said, "That is up here in another precinct: come up and I will go with you." We went up to the polls, and the United States Marshal, or Inspector, I don't recollect which, said, "You have voted before: that man has voted before." So I suppose he voted before, or knew he did, and that he was doing wrong, for he walked off.

Q. You were present in this precinct where DuRose states he was present? A. Yes, sir.

Q. Were you there at the time he specifies? A. Yes, sir.

Q. Did you see anybody with a pencil in their hand? A. No, sir: I did not.

Q. You were watching for anything of that kind? A. Yes, sir: I was.

Q. And you didn't see anything of that kind? A. No, sir: I don't recollect seeing that man in the position at all that he states, because during the time Mr. Buckley sat on one side and the stranger on the other, and it is impossible.

Q. And you have talked with Mr. Buckley about this since? A. I talked with him about it going home.

Q. Did you ask Mr. Buckley about it? A. Yes, sir; going home last night I asked him.

Q. What did he say? A. He said nothing of that kind occurred.

Q. Did you talk with anybody else about it? A. No, sir.

Q. Do you know Mr. Smith? A. Yes, sir.

Q. Was Mr. Smith there? A. Yes, sir.

Q. Did you talk with Mr. Smith about it? A. No, sir; I did not.

Q. And all of you were in the Third Precinct there, weren't you? A. I was in the Third Precinct during the whole time the vote was counted. I don't think I was out of there an hour during the whole time.

Q. A great many people reported to you, didn't they, there, that they had been offered places by Mr. Banks? A. Yes, sir. That is, nobody reported that Banks offered them a place, but John Fargo told me that Michael Smith, acting as agent for Mr. Banks, offered him a place.

Q. You heard of places being offered to people by the Governor, for instance, for their voting for Banks? A. I heard rumors; yes.

Q. Did anybody tell you that the Governor of this State had offered them anything to stand in for Banks? A. No, nobody told me.

Q. Do you know Mike Barry? A. Yes, sir.

Q. Did you and Mike Barry have a talk about this? A. No; he never said anything about that to me.

Q. Did he tell somebody else that has told you? A. I believe he has told somebody else, but I don't know who it is.

Q. What was that? A. I heard that the Governor sent for Barry, and promised him a place, provided he would stand in for Banks.

Redirect Interrogatories.

By MR. DORN: You know all of this of your own knowledge, do you? A. This is hearsay.

Q. This is the veriest kind of hearsay, isn't it? A. It is only hearsay, as far as that goes.

By MR. CLUNIE: And you are testifying here at Mr. Dorn's request? A. Yes, sir.

By MR. DORN: Are you testifying now at my request? A. I don't know at whose request I am testifying. I went on the stand at your request.

Q. You were one of the witnesses here for Mr. Sullivan, weren't you? A. I was.

Q. You were one of his reliable agents and canvassers up there in the election, were you not? A. Well, yes.

Q. Didn't you testify in your direct examination that your particular fight was for Mr. Sullivan? A. No, sir; I didn't testify to anything of the kind.

Q. You did not? A. No, sir.

Q. If you did testify to that you were mistaken, were you not? A. I did not testify to it.

Q. I say if you did? A. I did not.

Q. If you had? A. I have not.

Q. Then you would have misstated, would you? A. I have not misstated anything. I know what I have testified to.

Q. I say, if you had so testified it would have been a misstatement, would it? A. I have not testified to anything of the kind.

MR. DORN: Will your honors direct him to answer the question?

THE COURT: Answer the question.

By MR. DORN: I say, if you had made such a statement that you had made special fight for Mr. Sullivan, it would have been untrue, would it? A. If I made the statement that I made a special fight for Mr. Sullivan it would be untrue; yes, sir.

Q. Before you went on the stand I asked you if you knew about these ballots, didn't I? A. Yes, sir.

Q. Didn't you say then there were eight straight Republican tickets?
A. That is what they said.

Q. I say didn't you say to me that there were eight Republican tickets?
A. Yes, sir.

By MR. CLUNIE: That is what you think now, isn't it? A. Yes, sir.

By MR. DORN: And you said that to me before I put you on the stand?
A. Yes, sir; but I didn't see the ballots, and Judge Finn held the ballot in his hand about as far from me as you are now.

Q. But you stated to me that they were straight Republican tickets?
A. That is what they said; yes, sir.

JOHN F. FINN.

A witness on behalf of respondent, was called, sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Judge, you are the Judge of Department Three? A. Yes, of the Superior Court.

Q. Is that the department in which the contest for Mayor was held?
A. The recent contest? Yes, sir.

Q. The contest for the office of Mayor for the City and County of San Francisco was tried recently in that Court? A. Yes, sir; in the month of December last.

Q. And a portion of it was the counting of the ballots recently cast in the City and County of San Francisco? A. Yes, sir; so far as that office was concerned.

Q. Do you remember the circumstance of certain ballots that were claimed to be short, and they were therefore not counted by the Precinct Board, coming before you for examination, and to be passed upon in that contest? A. I remember there were a number of ballots—a batch of them, the exact number I don't remember, seven or eight—that were a trifle short; they were a margin less than the eighteen inches allowed by law.

Q. Do you remember whether those ballots were the ballots which had been cast in the Eighth Precinct of the Thirty-third Assembly District?
A. That I cannot remember, because I did not charge my memory with the number of the precinct.

Q. What was the ruling which was made by yourself as Judge of that Court in that contest at that time, with regard to the admissibility of those ballots? A. I admitted them, on the authority of the case of Kerr vs. Rhodes, in 46 Cal. The Court there held that proceedings of that kind are to a large extent directory; that is, directions as to the actual ballot, and the Court always construe the law liberally with reference to the admissibility of those ballots, and on the strength of that case I admitted those ballots.

Q. Do you remember whether eight of those ballots were eight unscratched Republican ballots? A. I cannot testify certainly to that. They were Republican ballots, but I don't remember whether they were scratched or not. My memory is that they were, but I cannot testify to a certainty.

Q. There was no circumstance to charge your memory specially with it?
A. No, sir.

Q. But your memory is that they were? A. My impression is that they were straight Republican tickets.

Q. And that is the best of your impression on that at the present time?
A. Yes.

By MR. CLUNIE: You don't remember seeing Mr. Banks' name on those tickets? A. No, sir; my impression is very strong, and it is almost certain, that the tickets were unscratched.

Q. But you don't remember the district or precinct? A. No, sir.

GEORGE S. McCOMB.

A witness on behalf of respondent, was called, sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Mr. McComb, were you present in Judge Finn's Court, in the Superior Court of this city and county, during the recent contest that was pending before that Court for the office of Mayor? A. Yes, sir.

Q. Were you present during the progress of that count when the ballots of the different precincts of this city and county were examined and counted by the Court? They were so examined, were they? A. Yes, sir.

Q. Were you present when the Eighth Precinct of the Thirty-third Assembly District was counted? A. Yes, sir.

Q. What were you doing there? A. I was keeping a snap tally for Mr. Russell.

Q. Do you remember the circumstance of the Judge passing upon some ballots which had been rejected by the Precinct Board and refused to be counted? A. Yes, sir.

Q. What order did the Judge make? A. The Judge ordered them to be counted, and they were straight Republican tickets.

Q. How many? A. There were eight of them, I believe.

Q. Did you examine them with regard to the office of State Senator?
A. They were straight Republican tickets, and no scratch on them at all; so of course the Senator was Banks.

Q. Were they tickets of the Twenty-first Senatorial District? A. I couldn't swear to that.

Q. What is your impression? A. My impression is that it was, because, if I may give the impression, Mr. Falk, or some other gentleman, was taking off the count at the time, and he was keeping the count of the Senatorial contest there, and he counted up eight votes for his name.

Q. Eight votes for whom? A. For Banks. Of course he could see the Senator when he was taking off that vote.

Q. Was anybody taking off the tally for members of the Legislature?
A. I am not sure about that; I didn't pay any particular attention to that, but I think there was some there during the whole contest.

Q. Do you know who got the tally of those eight votes for member of the Legislature; whether it was the Republican or whether it was the Democratic candidate from that Assembly District, or not? A. I couldn't state that positively.

Q. But you are positive that Mr. Falk took that tally? A. Yes, sir; for Senator.

A. And announced that they were for Mr. Banks? A. Yes, sir.

Cross Interrogatories.

By MR. CLUNIE: You didn't see the Senatorial vote at all? A. No, sir.

Q. You were kept busy looking at the Russell vote? A. I didn't have to examine those. Judge Finn stated they were eight straight Republican ballots.

Q. But you didn't see them at all? A. Yes; I did look at it, and see they were eight straight Republican votes, and no scratches on them.

Q. But, as a matter of fact, you only know what you heard? A. I only know what I saw.

Q. But you didn't see Banks' name? A. I know they were straight Republican tickets.

Q. But you don't know that they were straight tickets for the district in which Mr. Banks was running? You don't know how that was?

A. No; I didn't take notice what Senatorial District they were.

 RAY G. FALK.

A witness on behalf of respondent, was sworn, and testified as follows:

Direct Interrogatories.

By MR. DORN: Mr. Falk, were you present in Judge Finn's Court during the late contest for Mayor which was being tried there? A. Yes, sir; part of the time.

Q. Were you present when the Eighth Precinct of the Thirty-third Assembly District was counted? A. Yes, sir.

Q. Do you remember the circumstance of the Judge's ordering certain ballots counted which had been rejected by the Precinct Board? A. Yes, sir.

Q. How many ballots were there? A. I believe there were eleven.

Q. How many of those were Republican and how many were of other kinds? A. I think eight of them were Republican and one Democratic ballot, and the other two I am not certain.

Q. Did you take off the tally for Senator on those ballots? A. Yes, sir.

Q. Upon those eight Republican ballots, which you say were Republican ballots, whose name appeared for Senator? A. Mr. Banks.

Q. Then if those ballots had been counted by the Precinct Board as they were afterwards counted by the Superior Court, in the contest which was pending in that Court, when they came before the Court Mr. Banks would have received eight more votes for Senator in the Thirty-third Assembly District than the tally gives him? A. Eight more, yes, sir;

Cross Interrogatories.

By MR. CLUNIE: You were there for Mr. Banks, were you? A. Yes, sir.

Q. Where were you employed then? A. No place.

Q. You were not in the Tax Collector's office then? A. No, sir; I was a gentleman of leisure then.

Q. You went in there at Mr. Banks' request? A. I did, sir.

Q. And you saw these ballots? A. I did, sir.

Q. What was the reason they had been rejected; do you know? A. Eight of them on account of being short ballots.

Q. Then there were not eleven? A. There were eleven in that district, but eight of them rejected on account of being short—marked short.

Q. Did you see these ballots? A. Yes, sir.

Q. With the other gentlemen's names on them? A. Yes, sir.

Q. You were in a position so you could see them? A. Yes, sir.

Q. You saw them? A. Yes, sir.

[Respondent rests.]

F. E. DORAN.

A witness in rebuttal on behalf of contestant, was recalled, and testified as follows:

Direct Interrogatories.

By MR. CLUNIE: Mr. Doran, do you know a man here, a little drunken fellow, called Louis Campbell? A. No, sir.

Q. You never saw him, did you? A. Yes, sir, I have seen him; but I don't know him to speak to.

Q. You have seen him? A. Yes, sir.

Q. You know what his reputation is? A. I never knew much about the man. I have seen him under the influence of liquor a half a dozen times.

Q. You have seen him twice, and you have seen him drunk? A. I have seen him when he looked to me as if he had whisky aboard.

Q. If that gentleman took the stand and swore he saw you bring four people around and buy their vote and give them silver, I will ask you if on election day at the place he states, or any other place, you bribed anybody to vote the Democratic ticket or for Mr. Sullivan, or any other person? A. No, sir; I did not.

By MR. DORN: Where are you employed now, Mr. Doran? A. In the License Office.

Testimony closed.

[Here the further hearing of the case was continued until to-morrow morning at ten o'clock.]

[It is stipulated by and between the respective parties to the above, and their attorneys, here in open Court before the Justices, Hon. James I. Boland and H. J. Stafford, who were duly commissioned to take the testimony of witnesses in the contest of J. J. Sullivan, contestant, vs. W. O. Banks, respondent, for the office of State Senator from the Twenty-first Senatorial District, that the annexed testimony and exhibits constitute all the testimony and exhibits taken before said Justices in said contest, and that the reading and signing of the depositions of the witnesses named in this testimony is hereby expressly waived; and it is hereby stipulated that said testimony shall have the same force and effect whether signed or not as if said witnesses had each respectively signed the testimony set down and reported as being given by him upon the hearing of said proceeding. This stipulation is intended to waive all technical objections which could be made to said testimony because of its not having been signed by any or all of said witnesses.

This stipulation is intended also to take the place of a certificate from the Commissioners to the taking and identity of the foregoing testimony and exhibits, which said certificate is hereby expressly waived.]

CLUNIE & CLUNIE,
Attorneys for Contestant.

DORN & DORN,
Attorneys for Respondent.

REPORT
OF
COMMITTEE OF ARRANGEMENTS AND MANAGEMENT
OF THE
Funeral of the Late GOVERNOR BARTLETT.

REPORT OF COMMITTEE.

To his Excellency R. W. WATERMAN, Governor of the State of California:

Upon the death of Washington Bartlett, Governor of the State of California, on September 12, 1887, and your assumption of the position as Governor, it was decided by you that a State funeral should be accorded to him. At your request we assumed the responsibilities of Committee of Arrangements and Management of the Funeral, and now report our action as follows:

On September thirteenth, the day after his death, the remains of Governor Bartlett were conveyed from Oakland to the hall of the Pioneer Society in San Francisco, the following named gentlemen acting as pallbearers: Colin M. Boyd, E. B. Pond, Arthur Rodgers, A. P. Williams, George K. Fitch, George T. Marye, Jr., W. D. English, and Washington Ayer.

Brigadier-General W. H. Dimond, N. G. C., was asked to furnish a guard of honor to the remains. Company F, of the Third Infantry Regiment, Second Brigade, National Guard of California, was accordingly detailed for that purpose, and upon arrival at Pioneer Hall assumed that duty. It was decided to hold the funeral obsequies at 10 A. M., on Friday, the sixteenth day of September, and in the meantime that the body of Governor Bartlett should lie in state in Pioneer Hall, where an opportunity should be allowed the public to view the remains. The body was deposited on a stately catafalque in the hall, and the room and entrances elaborately draped. As soon as the workmen could prepare the room it was opened to the public, and a vast concourse of people came to look upon the face of the dead.

The obsequies took place on Friday, September sixteenth. General W. H. Dimond, at the request of the Committee, acted as Grand Marshal of the funeral procession. At ten o'clock Governor R. W. Waterman and staff, officials of the United States and of the State, and representatives of foreign States residing in this State, and the pallbearers, consisting of the following named gentlemen: John G. Downey, Newton Booth, George Stoneman, Leland Stanford, George E. Belknap, John S. Hager, E. W. McKinstry, W. R. Davis, L. U. Shippee, George H. Sanderson, William T. Garratt, Frank Dalton, T. J. Clunie, M. F. Tarpey, N. Greene Curtis, George K. Fitch, E. B. Mastic, John A. Stanley, George T. Marye, Jr., Levi Strauss, R. H. F. Variel, C. A. C. Duisenberg, I. W. Hellman, Alex. T. Vogelsang, W. C. Burnett, F. F. Low, Romualdo Pacheco, George C. Perkins, George Hearst, O. O. Howard, Niles Searls, E. B. Pond, Isaac E. Davis, E. S. Holden, J. V. Coffey, W. L. Merry, P. B. Cornwall, Washington Ayer, Henry Vrooman, John F. Swift, William T. Coleman, John P. Irish, Philip A. Roach, Albert Dibble, Albert Miller, Jacob Bergman, Robert J. Tobin, Colin M. Boyd, and Sampson Tams, were marshalled, and, with the Guard of Honor, marched to Trinity Episcopal Church, where religious ceremonies were held. These ceremonies were conducted by Rt. Rev. Bishop W. Ingraham Kip, Rev. Dr. H. W. Beers, and Revs. Dr. Lathrop and Chetwood. After the religious exercises the procession of officials, representatives, soldiers (Federal and State), societies, and persons not classed in organizations was formed, and marched through crowded streets to Laurel Hill Cemetery, where the last rites to the dead were celebrated, and his body left to his personal representatives.

The foregoing is a very brief outline of the obsequies of Governor Bartlett. We annex hereto copies of reports of the same from day to day, as given in some of the newspapers of San Francisco, which will indicate more fully the work done in this behalf.

In the conduct of this State funeral it became necessary to incur considerable indebtedness. This was done by the committee in the confidence that such reasonable indebtedness would be borne by the State. In assuming this liability your committee endeavored to confine the expenses to the necessary and appropriate purposes of the occasion, and within reasonable limits. The following is a list of the expenditures incurred by the committee, all of which have been paid:

NAME.	Voucher.	Amount.
N. Gray & Co.	1	\$871 55
United Carriage Company	2	148 00
W. and J. Sloane & Co., interior decorations	3	566 26
Peter Pumyea	4	50 00
Alta California Publishing Company	5	60 00
San Francisco Call Publishing Company (three bills)	6	54 00
San Francisco Chronicle	7	78 40
Daily Report (two bills)	8	8 00
The Evening Post Publishing Company	9	5 00
The Examiner (three bills)	10	32 50
Robert Westfield, sexton Trinity Church	11	91 00
Pacific Carriage Company	12	125 00
Blum's Orchestra Band	13	114 00
H. S. Crocker & Co.	14	64 45
Charles Meyer & Son	15	132 00
Walcott's Band	16	95 00
First Artillery Band, from Presidio	17	110 00
P. Frstina	18	40 00
Choir and Organist, Trinity Church	19	175 00
J. M. Litchfield (two bills)	20	24 30
Keane Bros.	21	1 25
A. J. Peterson, messenger	22	6 00
P. Corkery	23	25 00
San Francisco District Telegraph Company	24	12 70
A. T. Vogelsang (sundries)	25	34 00
Marion Wells, sculptor	26	25 00
William Meyer & Co., flowers	27	17 50
San Francisco Bulletin Company	28	5 00
I. W. Taber	29	18 00
Pacific Postal Telegraph Company	30	6 61
Company E, Third Regiment	31	75 33
Occidental Hotel	32	10 00
W. and J. Sloane & Co., exterior decorations	33	54 81
Received for material used in drapery sold by W. and J. Sloane & Co.		\$3,135 66
		78 50
		\$3,057 16

A duplicate receipt for each item of expenditure, numbered to correspond with the items above, is hereto annexed.

In order to pay all these expenses, this amount, \$3,057 16, was borrowed on a note dated September 22, 1887, for the sum of \$3,057 16, with interest at 7 per cent per annum, payable February 22, 1889. The amount thereof at that time will be \$3,360 32. This note was executed to the Bank of California by the following gentlemen: Wm. D. English, A. P. Williams, Arthur Rodgers, Wm. H. Jordan, George T. Marye, Jr., M. F. Tarpey, C. H. Maddox, R. W. Waterman, J. C. Smith, Thos. J. Clunie, George Hearst, and Richard T. Carroll.

As before stated, the amount of this note on February 22, 1889, will be \$3,360 32, which amount we respectfully ask the Legislature to appropriate.

We are glad to say that the traders with whom we dealt were generally very liberal, and in some important instances, as in furnishing the draping for instance, made no profit whatever for the supplies furnished. The newspapers without exception deserve special recognition for numerous announcements made without cost.

Finally, we cannot close without an expression of our appreciation of the profound sorrow on the death of the Chief Magistrate of the State manifested by the people of all conditions, gathered at his funeral from all portions of the State.

Thanking your Excellency for your support of our efforts, we respectfully submit the foregoing.

WM. D. ENGLISH,
A. P. WILLIAMS,
WILLIAM H. JORDAN,
ARTHUR RODGERS.

COMMUNICATION

FROM THE

STATE CONTROLLER TO THE ASSEMBLY.

COMMUNICATION FROM THE STATE CONTROLLER.

OFFICE OF THE CONTROLLER OF STATE,)
 SACRAMENTO, CALIFORNIA, February 28, 1889.)

To the Assembly of the State of California:

In conformity with the resolution adopted by your honorable body February 12, 1889, which reads as follows:

"Resolved, That the Controller of State be and he is hereby required to furnish the Assembly with the following information, to wit:

"First—The whole amount of taxes delinquent upon railroads assessed by the State Board of Equalization for the years 1883, 1884, 1885, 1886, and 1887.

"Second—The proportion of said delinquent taxes due the several State funds, and the amount due each county.

"Third—The amount which, if the total delinquency were paid, would, upon the basis of the school census for the present year, and the rates levied for school purposes in the several counties, be available for school purposes in each county."

I have the honor to make the following statement:

Replying to the inquiry contained in subdivision first of the resolution, the amounts due for the several years are as follows:

For the year 1883.....	\$222,251 33
For the year 1884.....	323,852 49
For the year 1885.....	720,718 11
For the year 1886.....	648,957 05
For the year 1887.....	648,541 38
Total.....	\$2,564,320 36

Replying to the inquiry contained in the second subdivision, the amount of such delinquent taxes due the several State funds, and the amount due each county, are as follows:

Due the State General Fund.....	\$538,234 64
Due the State School Fund.....	302,126 79
Due the State Interest and Sinking Fund.....	66,547 80
Due the State University Fund.....	4,171 98
Due Alameda County.....	73,014 32
Due Butte County.....	53,569 97
Due Calaveras County.....	47 39
Due Colusa County.....	33,482 80
Due Contra Costa County.....	31,611 74
Due Fresno County.....	90,132 57
Due Kern County.....	126,519 95
Due Los Angeles County.....	89,210 63
Due Marin County.....	2,441 33
Due Merced County.....	51,339 70
Due Monterey County.....	\$35,898 75
Due Napa County.....	33,061 08
Due Nevada County.....	65,670 56
Due Placer County.....	157,170 05
Due Sacramento County.....	38,034 38
Due San Benito County.....	11,230 88
Due San Bernardino County.....	141,336 46
Due San Diego County.....	120,681 65
Due San Francisco County.....	9,092 98

Due San Joaquin County.....	\$38,231 98
Due San Mateo County.....	16,010 35
Due San Luis Obispo County.....	934 14
Due Santa Clara County.....	34,714 47
Due Santa Cruz County.....	4,097 33
Due Shasta County.....	119,925 61
Due Sierra County.....	5,446 97
Due Siskiyou County.....	13,104 03
Due Solano County.....	33,778 21
Due Sonoma County.....	776 45
Due Stanislaus County.....	18,062 73
Due Sutter County.....	7,477 29
Due Tehama County.....	79,429 43
Due Tulare County.....	59,085 79
Due Yolo County.....	25,911 42
Due Yuba County.....	32,505 76
Total.....	\$2,564,320 36

Replying to subdivision third of the resolution, the amounts levied for school purposes by the Boards of Supervisors of the various counties, the proportion of the State School taxes due for the several years—\$302,126 79—which, if paid, would reach the various County Treasuries and be available for the support of the common schools, according to the school census of the present year, together with the total amount of such delinquent railroad taxes levied for school purposes, are set forth in the following table:

	Amount of delinquent taxes on railroads levied by counties for the support of schools.	Amount of delinquent State school taxes due upon railroads which, if paid, would be apportioned to each county.	Total due each county for school purposes on account of delinquent railroad taxes.
Alameda.....	\$12,460 60	\$23,718 91	\$36,179 51
Alpine.....		96 05	96 05
Amador.....		3,405 49	3,405 49
Butte.....	11,138 30	4,675 43	15,813 73
Calaveras.....	7 00	2,638 16	2,645 16
Colusa.....	6,409 31	3,640 04	10,049 35
Contra Costa.....	6,756 12	3,745 03	10,501 15
Del Norte.....		567 40	567 40
El Dorado.....		2,539 88	2,539 88
Fresno.....	20,747 12	6,546 27	27,293 39
Humboldt.....		6,249 17	6,249 17
Inyo.....		666 80	666 80
Kern.....	19,108 94	1,817 23	20,926 17
Lake.....		1,992 58	1,992 58
Lassen.....		1,110 22	1,110 22
Los Angeles.....	14,009 13	30,436 06	44,445 19
Marin.....	344 75	2,561 10	2,905 85
Mariposa.....		1,100 17	1,100 17
Mendocino.....		4,711 17	4,711 17
Merced.....	7,337 94	1,754 68	9,092 62
Modoc.....		1,600 55	1,600 55
Mono.....		355 18	355 18
Monterey.....	8,677 51	4,864 19	13,541 70
Napa.....	4,424 84	3,978 47	8,403 31
Nevada.....	11,773 50	5,270 74	17,044 24
Placer.....	25,349 49	3,274 81	28,624 30
Plumas.....		1,166 06	1,166 06
Sacramento.....	5,423 85	9,609 98	15,033 83
San Benito.....	2,869 11	2,176 88	5,045 99
San Bernardino.....	33,777 15	6,570 84	40,347 99
San Diego.....	24,856 95	9,016 89	35,873 84

	Amount of delinquent taxes on railroads levied by counties for the support of schools.	Amount of delinquent State school taxes due upon railroads which, if paid, would be apportioned to each county.	Total due each county for school purposes on account of delinquent railroad taxes.
San Francisco	\$970 82	\$66,694 61	\$67,665 43
San Joaquin	9,921 19	7,038 83	16,960 02
San Luis Obispo	211 10	4,634 10	4,845 20
San Mateo	2,723 87	2,877 19	5,601 06
Santa Barbara		4,637 45	4,637 45
Santa Clara	4,922 71	12,575 40	17,498 11
Santa Cruz	830 93	4,868 65	5,699 58
Shasta	34,389 68	3,642 28	38,031 96
Sierra	1,118 72	1,231 96	2,350 68
Siskiyou	4,173 25	2,739 80	6,913 05
Solano	6,661 34	5,056 30	11,717 64
Sonoma	164 32	9,441 32	9,605 64
Stanislaus	3,278 68	2,680 61	5,959 29
Sutter	1,837 33	1,477 68	3,315 01
Tehama	14,784 32	2,986 64	17,770 96
Trinity		842 16	842 16
Tulare	15,032 50	6,473 67	21,506 17
Tuolumne		1,769 20	1,769 20
Ventura		2,551 04	2,551 04
Yolo	4,415 44	3,597 60	8,013 04
Yuba	3,292 87	2,453 87	5,746 74
Total	\$326,200 68	\$302,126 79	\$628,327 47

The assessments upon which these taxes are due were made by the State Board of Equalization, such assessments being for the franchise, roadway, roadbed, rails, and rolling stock of railroads operated in more than one county of the State.

Of the railroad companies delinquent for taxes for the years 1883 to 1887, inclusive, the Central Pacific, Southern Pacific, California Pacific, Northern Railway, and the San Pablo and Tulare, and the Stockton and Copperopolis Railroads each paid 60 per cent of the taxes levied against them for the year 1883, leaving the amount shown in the statement as still due from them for that year.

For the year 1884, the Stockton and Copperopolis Railroad Company paid its taxes in full when they became due and payable, and has also paid the taxes due for each subsequent year. The other companies named above paid about 51 per cent of the taxes levied against them for the year 1884, but for the years 1885, 1886, and 1887, they have paid nothing. The North Pacific Coast Railroad Company is delinquent for the sum of \$5,339 38 as taxes for the year 1885. The South Pacific Coast Railroad Company is delinquent for the sum of \$10,178 48 as taxes for the year 1887. The Pullman Palace Car Company is delinquent for the sum of \$1,102 18, as taxes for the year 1887 upon the rolling stock of the company used on the Central Pacific and other railroads.

From the above it will be seen that the entire delinquency, except the amounts due from the North Pacific Coast Railroad Company and the Pullman Palace Car Company, is chargeable to the system of roads operated by the Southern Pacific Company.

Respectfully submitted.

JOHN P. DUNN, Controller.

STATEMENT

RELATIVE TO

UNPAID CLAIMS OF CALIFORNIA AGAINST THE UNITED STATES,

TO

SPECIAL JOINT COMMITTEE.

STATEMENT.

To the Special Joint Committee appointed under Assembly Concurrent Resolution in terms as follows, to wit :

“ CONCURRENT RESOLUTION No. 5.

“ In view of the importance and amount of the unpaid claims of this State against the United States, and in order that the Legislature may have full information in regard thereto, and as to whether the good faith of this State has been maintained with all persons employed to collect any claims of this State against the United States ; therefore, be it

“ *Resolved by the Assembly, the Senate concurring,* That all matters which in anywise relate to the unpaid claims of this State against the United States, and to the efforts to secure a recognition and collection thereof from the United States made by this State or by any of its officers, and all matters involving the good faith of this State toward any persons employed to collect any claims of this State against the United States, be investigated by a special Joint Committee of seven—three from the Senate, to be selected by the President pro tem., and four from the Assembly, to be selected by the Speaker—which Joint Committee is now hereby appointed for the purpose aforesaid. Said committee, at the earliest date practicable, shall report all the facts and its conclusions, and may submit at any time its recommendations thereon by bill or otherwise.”

Adopted by the Legislature of California, January 25, 1889.

I have the honor to now respectfully bring to your notice and for your consideration certain matters as follows, to wit :

First—I have been employed for over ten years—to wit, since November 1, 1878—to collect for the State of California from the United States certain claims alleged to have been then unpaid, and for many years prior thereto due to the State of California; and which employments, whence derived, the dates thereof, the action of the Legislature approving same, as far as the Legislature has acted thereon, the recommendations in the regular messages of former Governors of California in relation thereto, are all set forth in exhibits hereto attached, made parts hereof, marked No. 1 to No. 12.

Second—My services under all these employments have at all times, ever since November 1, 1878, been diligently performed, and at all times at my own and great expense, and never at any time or place at any cost to this State; and never at any time to the dissatisfaction of any State officer of California (so far as I am advised), except in the single instance in the manner hereinafter referred to.

Third—In order that previous Legislatures should have full information in regard to these claims, I submitted on November 1, 1886, to the Governor of California a written report of my services under my said employments, covering a period of eight years, from November 1, 1878, to November 1, 1886.

This report proper for all the purposes of this statement is hereto attached, made part hereof, marked Exhibit No. 13.

Fourth—In order that *this* Legislature may be fully informed in regard to said claims, I am prepared to submit at this time additional facts in relation thereto, extending from November 1, 1886, to this date.

Fifth—If certain acts of the Governor of California, hereinafter referred to, are to be recognized by the Legislature *as the acts of the State*, then I respectfully submit to you that on the third, sixth, tenth, and twenty-fifth of February, and on the sixth of March, 1888, the obligations and good faith of the State of California, due me under and by virtue of my said employments, seem *not* to have been maintained, and in consequence of certain acts of the Governor of California on said dates, and whatever purpose or intention may have been contemplated thereby, yet they nevertheless were matters that involved the good faith of this State in its obligations towards me, under and by virtue of my said employments, and which acts of the Governor, and the mode and circumstances of their performance and the effect thereof, I now respectfully submit to you were in violation of such good faith. These acts of the Governor are set forth in exhibits hereto attached, made parts hereof, marked No. 14 to No. 19.

Sixth—If a certain other act of the Governor of California, hereinafter referred to, is to be recognized by the Legislature *as the act of the State*, then I further respectfully submit to you that on the eighteenth day of January, 1889, the obligations and good faith of the State of California, due me under and by virtue of my said employments, seem *not* to have been maintained; and in consequence of a certain act of the Governor of California on said date, and which act consisted in his refusal to pay me the compensation as determined and authorized to be fixed and paid through him, by the Legislature of California, and due and payable to me on that date when I delivered to him two drafts for \$11,723 64, collected by me under and by virtue only of my said employments, from and delivered to me by the United States in liquidation and payment on account of one of said claims, recognized by the United States to be due to this State.

Seventh—The history of this particular claim was duly submitted by me to the Governor of California in a paper, copy of which is hereto part hereof, marked Exhibit No. 20.

Eighth—The reasons alleged by the Governor of California for such refusal, were set forth in a paper, copy of which is hereto attached, made part hereof, marked Exhibit No. 21.

Ninth—Whatever purpose or intention may have been contemplated in this refusal by the Governor of California to pay me for my services in this case, and as set forth in said exhibit No. 20, yet it nevertheless was a matter that involved the good faith of the State in its obligations towards me. Under and by virtue of my said employments, and which act of the Governor, and the mode and circumstances of its performance, and the effect thereof, I now respectfully submit to you were in violation of such good faith.

Tenth—As the Governor of California has failed, up to this date, to pay me for my services the compensation as aforesaid, for the collection of this claim from the United States for the State of California therefore I now respectfully submit to you that the State of California has not fulfilled its part of its agreed obligation now due me in this case by this State.

Eleventh—Wherefore, I respectfully move that all of the aforesaid matters may be fully investigated by your honorable committee, and, from the facts found and conclusions reached by you in these premises, that adequate action may be had thereon by the Legislature—such as will provide me with an ample relief for the past and a secure remedy for the future under my said employments.

Respectfully,

JOHN MULLAN.

STATE OF CALIFORNIA, }
COUNTY OF SACRAMENTO. } ss.

John Mullan, on first being duly sworn, says: that he has read the foregoing statement, and all the exhibits thereto attached made parts thereof, and knows the contents of all of the same; that the same are true, except as to those matters therein stated upon information and belief, and as to those matters, he believes the same to be true.

JOHN MULLAN.

Subscribed and sworn to before me this seventh day of February, 1889.

MATT. F. JOHNSON,
Notary Public.

EXHIBIT No. 1.

STATE OF CALIFORNIA, OFFICE OF SURVEYOR-GENERAL,)
November 1, 1878.)

Capt. JOHN MULLAN, San Francisco, California:

DEAR SIR: I hereby appoint you Agent for the State of California, to secure from the United States, for the benefit of the State of California, the payment by the United States to this State of the five per centum of the net proceeds of the sales of all public lands lying within the State of California, which have been sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, and to be deposited in the State Treasury for such purposes as the Legislature may hereafter direct, which amounts have been provided for and granted to the other States in the Union.

I shall recommend to the next Legislature that you be paid such compensation for your services in the premises as shall appear just and proper, and based upon the amount of moneys you may succeed in recovering for this State.

You will see that the total amount recovered, without any deduction of any kind whatsoever, shall be transmitted by draft, and not otherwise, by the Hon. Secretary of the Treasury of the United States to the Treasurer of the State of California. You will report to this office from time to time the results of your action in these premises.

WM. MINIS, Surveyor-General.

EXHIBIT No. 2.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT, }
 SACRAMENTO, CAL., March 7, 1882. }

JOHN MULLAN, *Esq.*, *Washington, D. C.*:

SIR: In reply to your favor of the seventh instant, relative to prosecuting the claim of this State against the United States for money expended by it during the Modoc Indian War, I herewith authorize you, on behalf of the State of California, to represent the same in endeavoring to recover such amount as may be found due and owing by the United States Government and [to] the State of California, on the express conditions and stipulations stated in your communication of the date above cited.

Very respectfully,

GEORGE C. PERKINS,
 Governor of California.

EXHIBIT No. 3.

[Copy.]

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT, }
 SACRAMENTO, CAL., July 12, 1882. }

Captain JOHN MULLAN, *Washington, D. C.*:

DEAR SIR: In reply to your favor of the twenty-second ultimo, relative to certain claims of this State against the United States for money expended and indebtedness assumed in repelling invasions, suppressing insurrections, and Indian hostilities, I hereby authorize you, on behalf of the State of California, to represent the same in endeavoring to recover such amount as may be found due and owing by the United States Government to the State of California, on the express condition stated in your communication of the twenty-second ultimo.

Very respectfully,

GEORGE C. PERKINS,
 Governor of California.

EXHIBIT No. 4.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT, }
 SACRAMENTO, December 12, 1882. }

JOHN MULLAN, *Esq.*, *Washington, D. C.*:

SIR: It having come to my knowledge that measures are being taken by several of the States, through their duly appointed agents, to recover from the National Government certain moneys paid by such States under an Act of Congress, approved August 5, 1861, entitled "An Act to provide increased revenue from imports to pay interest on the public debt, and for other purposes," and as the State of California has paid the sum of two hundred and fifty-four thousand five hundred and thirty-eight (\$254,538) dollars under the provisions of said Act, it being the total amount assessed against the State, I, therefore, following the action of our sister States, do appoint you as the agent of the State of California to act in her behalf in taking such steps as may be necessary to recover from

the United States Government the sums of money so paid under said Act. Your compensation for services rendered thereunder to be left to the discretion of the State Legislature.

GEORGE C. PERKINS,
Governor of California.

EXHIBIT No. 5.

RECOVERY OF MONEYS FROM THE UNITED STATES GOVERNMENT.

Information having been received by me that the expenses incurred by this State, and by the citizens of Siskiyou and Modoc Counties, for the suppression of Indian hostilities during the Modoc Indian war of 1872, had never been reimbursed by the General Government, I appointed Captain John Mullan, at Washington City, D. C., to represent said interests, on behalf of this State, before the proper authorities of the United States, for the purpose of securing such reimbursements; and, also, for such as were provided for (for California) under the Act of Congress, approved June 22, 1882, authorizing an examination and adjustment of the claims of the States of Kansas, Nevada, California, Oregon, Colorado, Nebraska, and Texas, for repelling invasion and Indian hostilities therein, between April 15, 1861, and June 22, 1882. Since writing the above I have just been informed by telegraph that success has attended Captain Mullan's efforts, and that the Modoc war bill, reimbursing the State, has passed both houses of Congress.

In addition to the foregoing, I also received information that many of the States intended to petition the General Government for the return of moneys paid by some of them in part, and by others in whole, of the sums assessed to the several States under the Act of Congress, approved August 5, 1861, to pay the interest on the public debt, and for other purposes. The amount assessed to this State under said Act was \$254,538 66, which sum has been paid. But a few of the States have paid their assessments in full, others but a portion, and some of them not anything. Equity would demand that all or none should comply with the law.

Deeming the subject of considerable importance, and that the interests of the State required an agent in her behalf, with others employed in obtaining an equitable adjustment of these claims, I also authorized Captain Mullan to represent the State before the proper authorities at Washington, and would recommend that these appointments be ratified and confirmed by you, and that you provide for his compensation, to be paid out of the sums he may recover for the State, contingent, however, upon his success, it having been expressly understood that such compensation should be left entirely to your judgment and discretion.

Under an appointment from Surveyor-General William Minis, subject to legislative ratification, Captain Mullan, during the last four years, has endeavored to secure for California five per cent of the net proceeds of the sales of the public lands in this State, and has already made considerable progress in the same; and it is to be hoped before another Congress shall have adjourned that California may be placed upon an equal footing with all the other public land States in regard to this grant.

I invite your favorable attention to the report of Surveyor-General Shanklin touching this subject, and to the recommendations by him made in regard thereto.

(Signed)

GEORGE C. PERKINS,
Governor of California.

(Page twenty-two, Appendix to Journal of Senate and Assembly, twenty-fifth session.)

EXHIBIT No. 6.

THE FIVE PER CENT FUND.

I would invite your attention to the law of Congress, approved September 4, 1841, relating to the appropriation of the proceeds of the sales of public lands, etc. This Act named the eight States in which public lands were then for sale, giving said States 10 per cent of the net proceeds, and making provisions for the distribution of 5 per cent among certain new States and Territories. But this law did not contemplate a division among other than the twenty-six States and Territories then existing. No good reason can be shown why California should be excluded from this distribution, for it is a public land State, and has contributed largely to the fund to be distributed among other States. It was evidently an oversight in not putting California upon an equal footing with other States in this matter when she came into the Union. My predecessor, William Minis, taking the same view of the matter that I do, appointed Captain John Mullan as an agent of the State to aid in procuring Congressional legislation that would give us an equitable distribution, and so well has he succeeded, that mainly through his activity in presenting and urging the matter on the attention of our Representatives and before the Land Committees in Congress, that a bill has passed one house and is now pending in the other house, which will, if it becomes a law, give California the share she is justly entitled to in connection with the other States. Captain Mullan has constantly kept this office informed of what he has been doing in the matter.

(Signed)

JAMES W. SHANKLIN,
Surveyor-General.

EXHIBIT No. 7.

Assembly Concurrent Resolution No. 20, relative to directing the Governor to fix the compensation for services rendered by Captain John Mullan, in collections of claims due the State from the United States, adopted March 3, 1883.

WHEREAS, The Governor and State Surveyor-General of this State have heretofore respectively appointed Captain John Mullan, of San Francisco, California, agent and attorney to represent the interests of the State of California before the proper authorities of the United States, at Washington, District of Columbia, in the matter of the claim of this State to the five per cent net proceeds of the sales of the public lands by the United States in this State; and also in the matter of the direct tax levied upon this State by the United States, under the Act of Congress of August sixth, eighteen hundred and sixty-one; and also of her claim arising during the Modoc

war, in eighteen hundred and seventy-two; and also under the provisions of the Act of Congress of June twenty-seventh, eighteen hundred and eighty-two; therefore, be it

Resolved by the Assembly of California, the Senate concurring, That the appointments so conferred upon Captain John Mullan by the Governor and Surveyor-General, respectively, are hereby ratified and confirmed; and the Governor of this State be and he is hereby authorized and directed to fix the compensation for services by Captain John Mullan heretofore and that may be by him hereafter rendered, at twenty per cent of each of the sums or claims that may be by him collected from the United States, and to pay to him such per cent out of the moneys that may be collected by him and paid to this State on account of each of the foregoing matters, respectively; *provided, however,* that this State shall not in any event become liable for any expenses, fees, and salaries, of any nature whatever, other than such contingent commission.

SECTION 2. That the Controller of the State of California be and he is hereby authorized to deliver to Captain John Mullan, or to his authorized agent, all the original vouchers, certificates, and papers of every kind and nature against the Government of the United States, for or on account of each of the foregoing matters, respectively.

SEC. 3. That said Controller shall prepare and take from Captain John Mullan, or from his authorized agent, a receipt in writing, bound in a book, same as he keeps in his office for all such papers as aforesaid, and which shall show what the papers are in each case, the date thereof, by what Board of Examiners passed, the amount and date of the warrant, and in whose favor drawn.

EXHIBIT No. 8.

[Copy.]

STATE OF CALIFORNIA, OFFICE OF SURVEYOR-GENERAL.

[Official.]

Subject to the approval and ratification of the Legislature of the State of California, I hereby appoint Captain John Mullan to represent this State and collect therefor such amounts of money as have been paid by said State to the Registers and Receivers of the several United States Land Offices as fees for the selection of lands, as provided by law, and which selections, for cause satisfactorily shown, were not approved, confirmed, or certified to said State, but subsequently rejected and canceled, and to the restitution of which fees the State is entitled.

No expense connected with the collection of said amounts to be considered a claim against the State, and Captain Mullan to receive as compensation in full for said collection, the sum of twenty per cent (20 per cent) of the amount collected and received for by the State.

Witness my hand and seal this twenty-fourth day of October, 1883.

(Signed)

H. I. WILLEY, Surveyor-General.

EXHIBIT No. 9.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT,)
 SACRAMENTO, CAL., March 31, 1884. }

In addition to the claims due the State of California from the United States enumerated in the preamble to Assembly Concurrent Resolution No. 20, and adopted by the Legislature of California on March 3, 1883, Captain John Mullan, of San Francisco, California, now residing at Washington City, D. C., is hereby appointed agent and attorney to represent the interest of the State of California before the proper authorities of the United States at Washington City, D. C., in the matter of all moneys or balances that have been paid, or which remain due and to be or liable to be paid in whole or in part by the State of California, on account of any Indian war bonds or coupons issued by the State of California under the authority of the Legislature thereof, in its Acts approved fifteenth February, 1851, third May, 1852, and twenty-fifth April, 1857, respectively, for the suppression of Indian hostilities within said State, for the purpose of recovering from the United States for the State of California a sum equivalent thereto in payment or satisfaction of the whole thereof; together with all interest which is now and which may hereafter become due, payable, or allowed thereon, or on any part thereof, by the United States; and also, to recover from the United States all interest that is now or which may hereafter become due, payable, or allowed by the United States to the State of California, on account of any part of the money expended or liabilities assumed by this State on account of the war of the rebellion.

The compensation of Captain Mullan for his services in the foregoing named matters is fixed at 20 per cent of the moneys that may be collected by him or paid to the State of California in any of these premises; *provided, however*, that this State shall not in any event become liable for any expenses, fees, or salaries of any nature whatever other than such contingent commission.

This appointment and commission shall be subject to the ratification of the Legislature, otherwise to be void.

GEORGE STONEMAN,
 Governor of California.

EXHIBIT No. 10.

FEDERAL CLAIMS.

In reference to the several claims of the State alleged to exist against the United States, I beg to report that the agent for this State at Washington, D. C., under the executive authority heretofore conferred upon him and duly ratified by the Legislature, has brought to the official attention of the proper authorities and departments of the United States, sundry claims of this State. While the reports made by him from time to time in regard thereto show considerable and favorable progress, still, only two of such claims have been allowed and paid by the United States, namely, that of \$495 72 on account of the expenses incurred by the State in the year 1872 for the transportation of arms to the northern counties during the Modoc Indian war; and that of \$38,180 80, on account of the rebate of the fifteen per centum of the direct war tax levied upon and assessed to this State under the Act of Congress, approved August 5, 1861 (U. S. Statutes, vol. 12, p. 296).

The total amount of the Federal direct war tax levied upon the State of California, under the aforesaid Act of Congress, was \$254,538 67. This the State assumed and made provision for its payment in the Act of the Legislature approved April 12, 1862, and of the sum, up to February, 1863, had paid \$247,445 41. This left the amount, still due from the State to the United States, \$7,093 26.

It was claimed by the agent of this State that, though the State failed to make her payment of this direct war tax within the time prescribed in said Federal statute, and though she was in consequence not legally entitled to the rebate of fifteen per centum thereof, as described in section fifty-three of said Act, this State, nevertheless, was in equity entitled to said fifteen per centum rebate, since the collection and payment had been made without any expense whatever to the United States. By establishing this right in equity the agent succeeded in securing and collecting the rebate in the per centum mentioned.

In the settlement had between the United States and this State, arising under the two claims mentioned, the proper United States authorities deducted said sum of \$7,093 26 then delinquent and due the United States, and thereafter issued in the name of the Governor of California, a draft for the remainder, viz.: \$31,583 26, upon the United States Sub-Treasurer at San Francisco. This amount, after deducting the commission for collection as fixed by the joint resolution of the Legislature adopted March 3, 1883, was by me paid over to the State Treasurer in the sum of \$23,847 96.

In this connection I beg to report that under the belief that a proper effort, made by a competent person, to collect from the United States the old California Indian war debts would be crowned with success, I have duly appointed Captain John Mullan, the present agent, as agent also for such purposes, the appointment being subject to ratification by the Legislature. I have authorized him to present all the matters connected with the said war debts, including the interest paid by and due to this State on account of moneys heretofore expended and guaranteed by this State on account of Indian and other hostilities within its borders, to the proper United States authorities at Washington, with a view to the favorable recognition and payment of such claims. Such a presentation has been made by him, and the State may expect through his efforts an eventually favorable action in final adjustment.

The intelligence and fidelity displayed by Captain Mullan in the matters described fully reflect the confidence reposed in him by his selection for this special work, and I therefore recommend that the Legislature confirm the executive appointment of Captain Mullan made by me for the purposes above described.

(Signed)

GEORGE STONEMAN,
Governor of California.

EXHIBIT No. 11.

CHAPTER XVI.

Senate Concurrent Resolution No. 3, relative to directing the Governor to fix the compensation for services rendered by Captain John Mullan, in collections of claims due the State of California from the United States, adopted March 3, 1885.

WHEREAS, The Governor and State Surveyor-General of this State, respectively, have heretofore appointed Captain John Mullan, of San Francisco, California, agent and attorney to represent the State of California before the proper authorities of the United States, at Washington, D. C., in the matter of the claims of the State of California against the United States, growing out of past Indian hostilities, and for interest on moneys heretofore expended by this State on account of military operations herein and borders hereof, and in recovering all land fees heretofore illegally paid to the United States by this State; and, whereas, in pursuance of Concurrent Resolution Number Twelve, adopted February twenty-sixth, eighteen hundred and eighty-one, and in pursuance of Assembly Joint Resolution Number Thirty, adopted March ninth, eighteen hundred and seventy-two, James E. Hale and Thomas M. Nosler were duly appointed and commissioned agents on behalf of the State of California and the Governor thereof, by themselves and their duly constituted agents, to collect from the Government of the United States the cost, charges, and expenses properly incurred by the State of California for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the insurrection against the United States; and, whereas, said James E. Hale and Thomas M. Nosler have duly constituted said Captain John Mullan their agent and attorney, in pursuance of the foregoing authority conferred on them, in their names, places, and stead, to demand and receive all said moneys from said Government of the United States, and in and about the premises to act as their agent therein; therefore, be it

SECTION 1. *Resolved by the Senate of California, the Assembly concurring.* That the appointments so conferred upon Captain John Mullan by the Governor and Surveyor-General, respectively, are hereby ratified and confirmed, and the Governor of this State be and he is hereby authorized and directed to fix the compensation for the services by Captain John Mullan heretofore and that may be by him hereafter rendered, at twenty per cent of each of the sums or claims that may be by him collected from the United States, and to pay to him such per cent out of the moneys that may be collected by him and paid to this State on account of each of the foregoing matters respectively; *provided, however,* that this State shall not, in any event, become liable for any expenses, fees, and salaries of any nature whatever, other than such contingent commission.

SEC. 2. That the proper State officers of the State of California be and they are hereby authorized and directed to deliver to Captain John Mullan, or to his authorized agent, all the original vouchers, certificates, and papers of every kind and nature relating to the claims of this State against the Government of the United States for or on account of each of the foregoing matters respectively, and also all Controller's warrants that have been heretofore paid and canceled, and which may be needed to perfect any of the claims of this State against the United States, represented by him.

SEC. 3. That said State officers shall prepare and take from Captain John Mullan, or from his authorized agent, a receipt in writing, bound in a book same as they keep in their offices for all such papers as aforesaid, and which shall show what the papers are in each case, the date thereof, by what Board of Examiners passed, the amount and date of the warrant, and in whose favor drawn.

JOHN DAGGETT,
President of the Senate.
W. H. PARKS,
Speaker of the Assembly.

Attest:

THOS. L. THOMPSON,
Secretary of State.

[Indorsed:]

Senate Concurrent Resolution No. 3, passed the Senate February 25, A. D. 1885.

EDWIN F. SMITH,
Secretary of the Senate.

Passed the Assembly February 26, A. D. 1885.

FRANK D. RYAN
Clerk of the Assembly.

This resolution was received by the Governor this second day of March, A. D. 1885.

W. W. MORELAND,
Private Secretary of the Governor.

STATE OF CALIFORNIA, }
DEPARTMENT OF STATE. }

I, Thos. L. Thompson, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Senate Concurrent Resolution No. 3, adopted by the Legislature of the State of California at its twenty-sixth session, with the original now on file in my office, and that the same is a correct transcript therefrom and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, thirteenth day of March, A. D. 1885.

THOS. L. THOMPSON,
Secretary of State.

[SEAL.]

By A. E. SHATTUCK, Deputy.

EXHIBIT No. 12.

[Official.]

OFFICE OF SURVEYOR-GENERAL AND EX OFFICIO STATE LAND REGISTER }
OF THE STATE OF CALIFORNIA, December 1, 1885. }

Captain JOHN MULLAN, Washington, D. C.:

SIR: I hereby appoint you special agent on the part of this office and of the State of California (subject to the action of the Legislature of the State of California), to represent the interests of this office and that of

the State of California, before Congress, and before the proper bureaus and departments of the Government of the United States, at Washington City, D. C., in the matter of all lands inuring to the State of California, under the Acts of Congress approved September 28, 1850, and July 23, 1866, in regard to all swamp or overflowed lands, which have been heretofore sold or otherwise disposed of by the United States, to the loss or detriment of this State.

With a view of securing for this State a proper indemnity, in either lands or money, for such swamp or overflowed lands as have been heretofore so sold or otherwise disposed of by the United States.

H. I. WILLEY, Surveyor-General.

EXHIBIT NO. 13.

REPORT.

WASHINGTON, D. C., November 1, 1886.

Hon. GEORGE STONEMAN, Governor of California:

DEAR SIR: I have the honor to submit you a report upon the several claims of the State of California against the United States, for which I have been heretofore appointed agent and counsel, and for all of which I have been so acting for a period covering the eight years last past, to wit: from November 1, 1878, to November 1, 1886.

I have from time to time during said period made to you and to your predecessor, and to the present State Surveyor-General and Adjutant-General of the State of California, and to their predecessors in office, sundry detailed reports of my acts in all these premises, and have addressed you and them from time to time such proper communications thereon as enabled you and them to keep *au courant* with all proceedings had therein as the same transpired. Yet, in order, at the termination of your administration as Governor of the State of California, that you may have full information on all these matters, and for the purpose of your laying the same before the Legislature at its next session, and in view of the importance to the people of California of sundry of these several claims and of many circumstances connected therewith, and especially for the purpose of having an authentic record of the history of all thereof for future reference, in so far as my agency in any of these premises has been or may be hereafter concerned, I deem it proper to now submit you a general summary, covering each of said claims as represented by me during the eight years last past.

The several claims by me represented, as agent and counsel for the State of California, are as follows, to wit:

First—The five per centum of the net proceeds of the cash sales of the public lands in California made by the United States subsequent to the date of her admission into the Union—September 9, 1850—and not heretofore paid to the State of California by the United States.

Second—The refunding by the United States to California her quota of the direct tax levied by the United States under the Act of Congress approved August 5, 1861, and not heretofore reimbursed the State of California by the United States.

Third—The refunding by the United States to California the moneys heretofore by her expended on account of the Modoc Indian war, in north California, in 1872 and 1873, and not heretofore reimbursed the State of California by the United States.

Fourth—The refunding by the United States to California the moneys heretofore by her expended on account of Indian (other than Modoc) hostilities therein, and upon the borders thereof, between September 9, 1850, and June 27, 1882, and not heretofore reimbursed the State of California by the United States.

Fifth—The refunding by the United States to the State of California the moneys heretofore by her expended on account of the war of rebellion, and not heretofore reimbursed the State of California by the United States.

Sixth—The refunding by the United States to the State of California the moneys by her heretofore paid as *interest* on the principal borrowed by her on account of the two foregoing items, and not heretofore reimbursed the State of California by the United States.

Seventh—The refunding by the United States to the State of California the moneys by her heretofore paid the United States as *fees* upon those particular selections and locations of lands under the several land grants made by Congress to California, which have been declared *invalid* by the United States, not allowed, and which were finally canceled by the United States, wherever said fees have not been heretofore reimbursed the State of California by the United States; and, also,

The securing for the State of California an indemnity in either lands or money of so much of its Swamp Land Grant, made to her in the Act of Congress approved September 28, 1850, and confirmed to her in the Act of July 23, 1866, as have heretofore not inured to the benefit of said State, but which lands have in sundry instances been heretofore sold, or been otherwise disposed of by the United States, and without any benefit accruing therefrom to the State of California.

No. 1. THE FIVE PER CENT CLAIM.

During a law practice in California extending over a period of several years, devoted chiefly to land matters arising therein, it came to my knowledge that the State of California had never received from the United States, nor had ever been granted by Congress, any percentum of the net proceeds of the cash sales of the public lands therein made by the United States; and that while California had no *legal* claim against the United States therefor, yet in view of the fact that a similar grant had been made by Congress to all the other public land States of the Union, that an *equity* therein at least would seem to exist in behalf of California, which, if properly represented and urged at the proper times and places, by a competent party conversant with the subject-matter, might eventuate in finally securing a similar grant to California.

Therefore, in the year 1878, I brought this matter to the special attention of the State authorities of the State of California, to wit: to her Governor, Honorable William Irwin, and to her State Surveyor-General, Honorable William Minis, and made fully known to them all the circumstances and facts connected therewith within my knowledge, believing then and knowing now that no systematic effort had ever been made, *prior* to that time, to secure California the benefits of this grant.

It is true the Legislature of California, upon the recommendation of Hon. John B. Weller, Governor of California, on March 4, 1858, and in approval of the urgent and intelligent presentation to him of the valid

reasons therefor by Hon. Andrew J. Moulder, the Superintendent of Public Instruction, under date of March 4, 1858 (see Assembly Journal, ninth session, pages 302 *et sequiter* and 314), did, on March 11, 1858, memorialize Congress to make her such a grant; but the matter, so far as I know, began and ended in this one step. Certainly, in 1878, a period of twenty years had been allowed to come and go, and during which time no beneficial results had flowed to her therefrom.

Even in that single effort the Legislature of California admitted that Congress had changed, *by departing from* its policy, in the case of California in these premises—an admission which, to a very great extent, gave away the very case which the memorial sought to secure; but, be that as it may, one thing is most sure, that this admission, such as it was, could certainly not strengthen her position as a petitioner after a long lapse of years subsequent to the date of her admission into the Union.

A copy of this memorial is hereto attached, and marked Exhibit No. 1, and made a part hereof.

After having maturely considered the subject-matter in all its bearings, and all that it might involve, I was willing to visit Washington and there undertake, *at my own expense*, the presentation of this equitable claim of California before the proper United States tribunals, provided I were so authorized. The subject-matter having been duly considered by the State Surveyor-General and *ex officio* Register of State Lands, Hon. William Minis, the head of that branch of the State Government more directly than any other charged by law with the superintendence of the public interests in all matters relating to lands and land sales in California—that officer, on November 1, 1878, commissioned me as agent and attorney for the State of California in these premises, a copy of which commission is hereto attached and made a part hereof, and marked Exhibit No. 2.

My said appointment and commission were made subject to the action of the Legislature, for the purpose of ratifying and validating the appointment so by him made, and of fixing the compensation which I should receive, and which latter was to be entirely contingent upon success, to wit:

That I was to get nothing if the State got nothing; and *per contra*, if the State's claim should be recognized, then I was to receive such compensation as the Legislature might thereafter fix and declare whenever it should take up, consider, and act thereon.

Armed with this authority, I proceeded from California to Washington City in the month of November, 1878, at my own expense.

Immediately upon my arrival in Washington, for the purpose of testing the sense of the General Land Office as to whether there was sufficient authority of law by which that office could then recognize this claim of the State of California, I, on the twentieth of November, 1878, submitted to the honorable Commissioner of the General Land Office, my letter of appointment, together with a communication, copy of which is hereto appended and made a part hereof, and marked Exhibit No. 3.

To this letter the honorable Commissioner of the General Land Office replied in a communication dated November 28, 1878, a copy of which is hereto appended and made a part hereof, and marked Exhibit No. 4.

Having thus exhausted all *executive* remedy in the premises, I thereupon determined to address myself next to Congress, in order to secure that legislation without which the honorable Commissioner of the General Land Office had informed me he could not state an account to the Treasury Department in favor of the State of California; and deeming it my duty in these premises (with but few exceptions) then and now to always proceed through the members of the California delegation in Congress, in

either the Senate or House, and for this reason, I thereupon addressed a letter on this subject to the Hon. J. K. Luttrell, then in Congress from California, copy of which letter is hereto attached and made a part hereof, and marked Exhibit No. 5.

To this letter Mr. Luttrell replied in a communication, a copy of which is hereto attached and made a part hereof, and marked Exhibit No. 6.

Not being satisfied with this view of the case as expressed by Mr. Luttrell, I then, for reasons appearing to me good and sufficient, next brought the matter to the attention of Hon. P. D. Wigginton, then also in Congress from California, who, at my request, on January 20, 1879, introduced in the House a bill, H. R. No. 6081, third session, Forty-fifth Congress, to make this grant to California, and copy of which bill is hereto attached and made a part hereof, and marked Exhibit No. 7.

While I was not sanguine in securing any final result on this bill then, so near the end of the third and last session of the Forty-fifth Congress, yet I desired to get the matter on record and before Congress at the very earliest date possible, and due diligence on my part seemed to me to make this a matter of duty which I owed the trust that I had undertaken to execute.

This bill, it will be perceived, proposed to dedicate said proceeds to the "making or improving public roads, constructing drainage and irrigating ditches and canals, to effect a general system for irrigating the agricultural lands in said State, and in the mode and manner as the Legislature of said State may establish and direct."

During this third session of the Forty-fifth Congress, the Hon. George W. Julian was Chairman of the House Committee on Public Lands, and in whom I did not think I had found any friend of this measure; on the contrary, it seemed to me that he, with other members of that committee, seemed to labor under the impression that the State of California had no claim for this grant that was valid in either law or equity, and because she had accepted an admission into the Union without such grant or condition, and she had allowed twenty-eight years to pass without even urging this claim, which at best was questionable, and not well founded; and that the most that California could expect was, that should Congress make her any such grant, the same should take effect only from the date of its passage; which thereby, as I saw, would destroy more than one half of the value of this claim. I therefore feared to urge final action on this bill during the Forty-fifth Congress, fearing either an adverse report or one such as would limit the grant, by making it take effect from and at the date of the passage of the Act, and if action by Congress on such report should be delayed, as it would likely be, then the effect would inevitably be to render this grant barren of those substantial benefits for which I pleaded, to wit:

That this grant, when made, should relate back to the date of the admission of the State of California into the Union, or at least to the earliest date when the first sales of public lands for cash in California had taken place, and which date is July 1, 1857.

Finding the Committee on Public Lands during the Forty-fifth Congress little disposed to take any favorable action on this measure. I deemed it more prudent and diplomatic to let this measure rest until another Congress should meet, so that the Forty-fifth Congress adjourned with this matter unacted on but still *sub judice* before the House Committee on Public Lands, and as hereinbefore stated.

In view of the situation as I found same to exist in Washington during the Forty-fifth Congress, and in order that the Legislature of California

might express itself *de novo* on this subject, and believing that a resolution to Congress, expressive of its latest views and wishes therein, might have the effect to stimulate to more active efforts the California delegation at least in behalf of this measure, I prepared a resolution having for its object to express the wishes of the Legislature of California on this subject, and transmitted the same to Sacramento on the twenty-ninth November, 1880, to the Hon. Grove L. Johnson, then a State Senator in the California Legislature, with the request that he would interest himself in the subject-matter, and to introduce in the State Senate my said resolution, and informing him, among other things, that the interest of the State of California in this measure would aggregate at least one half million dollars; and which resolution was of a tenor like unto the bill which I had prepared and had Hon. P. D. Wigginton introduce, and as hereinbefore described.

This resolution passed the Senate of California during its session of 1880-81, but it failed to pass the Assembly during that session, when the Legislature adjourned *sine die*.

The Legislature of California having been convened in session in 1881, I again renewed my efforts to have that body pass a similar resolution at this session on this same subject, and with this object in view I again prepared another paper, and again transmitted it to Hon. Grove L. Johnson, still a State Senator, at Sacramento.

Before action was taken by the Legislature on this paper, I wrote to Mr. Johnson to change the form of said paper, which was then only a resolution, into a *memorial*, which, upon reflection, I thought it ought to be; and also to change the dedication of the proceeds of this claim from internal improvement purposes, which had been my original intention, to *educational purposes*, which, upon reflection, I thought might subserve larger interests.

This memorial Hon. Grove L. Johnson, at my request, introduced in the State Senate of California, where it passed and went to the Assembly, where it also passed that same session, and became the Act of the Legislature during its session of 1881, and on the ninth day of February, 1881, it became the expressed will of the State in the form of Senate Concurrent Resolution No. 1, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 8.

Certified copies of this Senate concurrent resolution, which in fact and in the body thereof, was a *memorial* under the seal of the State, having been sent to me from Sacramento, I presented the same to each of our Senators and Representatives in Congress from California, and also to the Public Lands Committee in both Senate and House of Representatives, and thereupon I prepared two bills in harmony with said memorial, one of which, to wit, Senate Bill No. 311, was, at my request, introduced in Congress on December 8, 1881, by Hon. James T. Farley, and the other, to wit, H. R. No. 61, was, also at my request, introduced in the House by Hon. C. P. Berry, on December 13, 1881, and copies of which bills are hereto attached and made a part hereof, and marked Exhibits Nos. 9 and 9½.

Prior to this date, to wit, on nineteenth February, 1880, during the second session of the Forty-sixth Congress, the Senate having under consideration Senate Bill No. 19, relating to the general subject of the five per cent claims (of those public land States which were *then* the beneficiaries of a grant thereof), at my request Senator Farley submitted an amendment thereto, in words as follows: "And provided further that the State of California is hereby placed upon the same footing as regards the five

per cent of the net proceeds of the sales of all public lands in the said State with the States named herein, and shall be entitled to all benefits and payments to which they, or either of them, are entitled under this and all previous Acts of Congress." (See page 1010 Congressional Record, vol. 10, second session Forty-sixth Congress, February 19, 1880.)

This bill having failed to pass Congress, like as in the Forty-fifth Congress, we were unable to secure any action for our California five per cent claim during the Forty-sixth Congress—no effort having been made in the House by me during the Forty-sixth Congress, as I feared the attitude of that committee, and especially its Chairman, on this proposition.

But, as before stated, I renewed my efforts before the next, or Forty-seventh Congress, and before which we had submitted, through Senator Farley, Senate Bill No. 311, and, through Hon. C. P. Berry, House Bill No. 61.

A house had assembled in the Forty-seventh Congress that changed the political character and *personnel* of the House Committee on Public Lands, and the change was more particularly marked by the substitution of Governor Pound, of Wisconsin, for its Chairman, *vice* Hon. George W. Julian, retired from Congress.

To support these two bills with appropriate facts and arguments, I compiled from various records and archives in the General Land Office a series of eight (8) tables of statistics, which contained a full history of all the legislation, from the earliest sessions of Congress to date, on this five per cent grant to the several States, and the reasons thereof, and the amounts of money received by the several States up to June 30, 1881, including a statement of the cash sales of public lands in California made by the United States up to June 30, 1881.

I thereafter, to wit, April 14, 1882, submitted these tables to Hon. N. C. McFarland, Commissioner of the General Land Office, for his examination and approval, and that officer finding them to be correct, he, at my request, so certified. The original of these tables I filed with the Senate Committee on Public Lands in the Forty-seventh Congress, and copies thereof I filed with the House Committee on Public Lands, and appended other copies as exhibits to an argument which I then prepared in support of said Senate Bill No. 311 and H. R. No. 61, and copies of all of which I filed with the Public Land Committee in Senate and House, and with the members of the California delegation then in Congress, and copies of which are hereto annexed and made a part thereof, and marked Exhibit No. 10.

It was during this Forty-seventh Congress, to wit, on December 5, 1881, that Senator Voorhees, of Indiana, introduced Senate Bill No. 67, having for its object to authorize the accounting officers of the Treasury, when stating the accounts for this five per cent event in behalf of any public land State, that was *then* the beneficiary thereof, to so state the same that it should include the sales made by or for *Military Bounty Land Warrants* as well as those made for cash, and which Bounty Land Warrants sales had always theretofore been excluded from such statements when any settlements had been had between the United States and said public land States.

A House Bill, to wit, No. 4239, for this purpose, had also been favorably reported (in House Report No. 70) upon in the Forty-fifth Congress, a copy of which report is hereto attached and made a part hereof, and marked Exhibit No. 11, and a copy of said Senate Bill No. 67 is hereto attached and made a part hereof, and marked Exhibit No. 11½.

Senator Voorhees' Senate Bill No. 67 in the Forty-seventh Congress being in all respects similar to said House Bill No. 4239 in the Forty-fifth

Congress, and being limited as it was exclusively to the public land States of Ohio, Indiana, Illinois, Missouri, Michigan, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, Arkansas, Louisiana, Alabama, Mississippi, Florida, Oregon, Nevada, and Colorado—*California being the only public land State not named therein, and, therefore, specially excepted from its provisions*—at my urgent request, while the same was under consideration in the Senate, Honorable James T. Farley, then in the Senate, who theretofore had *not* been in favor of the general Military Bounty Land Warrant legislation as contained in said Senate Bill No. 67 of the Forty-seventh Congress, yet finally agreed, at my request, to submit an amendment to said general Bill No. 67, *so as to include California*, copy of which amendment is hereto attached and made a part hereof, and marked Exhibit No. 12. This bill, amended by Senator Farley so as to include California, passed the Senate on the nineteenth day of May, 1882, by only five majority, and went to the House. Copy of the record of the vote had thereon is hereto appended and made a part hereof, and marked Exhibit No. 12½.

On the next day, upon a motion by Senator Pugh of Alabama, to reconsider the vote by which this bill passed the Senate, it was recalled from the House, and the vote by which it had passed the Senate was reconsidered and it was thereafter laid upon the table of the Senate, where it ever remained unacted on during the session.

It is due to truth to report that Senator Pugh had antagonized this bill during all the debates had thereon, and *only voted with the ayes in order to have the parliamentary privilege of moving its reconsideration*.

When Congress reconvened at its short and last session, the friends of the measure despairing of securing in so short a time any favorable congressional action thereon, failed to renew their further efforts in regard thereto, and consequently this bill, *which contained our California five per cent measure* in full effect, died with the Forty-seventh Congress. I now here insert a chapter of the history of this legislation within my personal knowledge, in order to record a fact which otherwise might never be recorded.

As I before stated, Senator Farley was *not favorable* to the general Military Bounty Land Warrant construction of the five per cent grant (a fact which, no doubt, Hon. Newton Booth, then also a Senator from California and a member of the Senate Committee on Public Lands, may possibly recall, as Senator Farley is now dead).

But Senator Farley's vote for this bill was then thought by its friends to be a necessity for its passage, and due to the fact that the Senate was thought to be quite evenly divided then on this general proposition, and because the sense of the Senate thereon having been informally taken it was found, certainly was then thought, that Senator Farley's vote *against* this general bill would defeat the same.

I have reason to believe that had Senator Farley voted against this general bill, that its friends would have thereafter given a cold shoulder by giving a large negative vote against Senator Farley's separate and independent Senate Bill No. 311, to grant California this five per cent claim.

Knowing these facts, I laid them all before Senator Farley, not once, but many times; and he appreciating the importance and the difficulty and the delicacy of his position on this general measure, finally waived all his objections to this general bill, in order that his action thereon should not thereafter be used as an argument or as a club with which to defeat our California five per cent claim, then pending, as it was, before the Senate in an independent and separate bill, to wit, Senator Farley's Senate Bill No. 311.

The friends of this general five per cent Senate Bill No. 67, which had solely for its object to include all sales of military bounty land warrants, indulged a confident belief that all the public land States, *then* the beneficiaries of this grant, had a claim against the United States so valid at law that it could be maintained by a mandamus proceeding, if initiated in the United States Supreme Court and directed specifically against the Commissioner of the General Land Office.

In view of such belief, two of the States, to wit: Iowa, whose interest in the military bounty land warrant sales made in that State aggregated \$595,853 31, by its State agent, Hon. R. P. Low (ex-Governor and ex-Chief Justice thereof), and Illinois, whose interest therein aggregated \$881,006 60, by its State agent, Hon. W. W. Wilshire (ex-representative in Congress from Arkansas), petitioned the United States Supreme Court for writs of mandamus to issue from it against said honorable Commissioner of the General Land Office, compelling him to state an account that would include all military bounty land warrant sales made in said two States by the United States. These two gentleman, therefore, as State agents for said two States, respectively, under the authority of their respective States, representing the same interests before Congress in this Senate Bill No. 67, and whose compensation, like mine, was to be contingent on success, that of Governor Lowe being one third ($\frac{1}{3}$) of such sums as he might recover—and whose relation to this subject-matter is set forth in a paper, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 13—prosecuted said mandamus proceedings.

I consulted with these gentlemen as to their view of the propriety of my intervening in behalf of the State of California in this proceeding; but it was their judgment that as California did not occupy that same legal relation to the subject-matter, such as Iowa and Illinois did, or such as would strengthen the general case before the Court, therefore I concluded that it would be unwise to intervene, and hence limited my efforts in aiding these two State agents in all that promised a successful result. The State of Alabama, having a legal status in the matter, intervened through her own State agent.

This judicial proceeding resulted in a denial of the writ of mandamus, as petitioned for, and as will more fully appear from copy of the order of dismissal of said petition, hereto attached and made a part hereof, and marked Exhibit No. 14.

During the forty-seventh Congress Senator Farley's said Senate Bill No. 311 was favorably reported on twentieth February, 1882, from the Senate Committee on Public Lands; and Representative Berry's House Bill No. 61 was ordered to be favorably reported to the House, when its public Land Committee should be called for reports, but which call was never made, so that the Forty-seventh Congress adjourned leaving the said Senate bill on the Senate calendar unacted on, though favorably reported; and no further action was had on this measure in the House other than that hereinbefore stated.

In view thereof, and of the fact that the proceedings before the United States Supreme Court had proven equally barren of beneficial results, I renewed my efforts in behalf of this measure before the Forty-eighth Congress, when I again prepared two (2) bills, one of which, to wit, Senate Bill No. 796, was, at my request, introduced on December 18, 1883, in the Senate by the late Senator Hon. John F. Miller; and the other, to wit, H. R. No. 111, was, at my request, introduced on December 10, 1883, in the House by the Hon. Barclay Henley, and copies of which bills are hereto attached and made a part hereof, and marked Exhibits Nos. 15 and 16.

Senator Miller was requested by me to take charge of this measure in the Senate at this time, in consequence of the fact that Senator Farley, who had had charge thereof during the Forty-seventh Congress, was absent from Washington sick.

Prior to this date it occurred to me that, as I had been diligently at work for a period of about five years in endeavoring to secure favorable action, in season and out of season, for this and other California measures, and as yet no action had been taken by the Legislature of California either to ratify and validate my appointments, or to determine and fix the compensation that I should receive in any of these premises, and believing that it was at least due me and the people of California that this matter should be now considered, and fully acted upon, and definitely disposed of, and not be left in doubt till my labors should be finally completed, and, if successful, that I should be *then* compelled to run the gauntlet of a hungry lobby sometimes said to be found outside the doors of a legislative body, and also said to be often composed of blackmailers, or unscrupulous and impecunious dead beats, who unfortunately, it is said, are at times successful in defeating meritorious measures, and who, some persons believe, allow action on private claims before a Legislature only on their own terms, I deemed it more prudent, rather than risk being placed in any such condition, to have this matter brought fully to the attention of the Legislature for its consideration and final action.

This subject-matter, with others relating to me, was, therefore, brought to the attention of the Legislature of California at its session in January, 1883, by Hon. George C. Perkins, Governor of California, in his concluding message to the Legislature, and also by the State Surveyor-General, Hon. James W. Shanklin, in his final annual report to Governor Perkins, and which references of said officials are hereto attached and made a part hereof, and marked Exhibits Nos. 19 and 20. The Legislature of California having maturely considered the entire subject-matter in its appropriate committees of each of its respective Houses, and also by each of its respective bodies as a whole, finally passed a resolution on the third day of March, 1883, ratifying and confirming, among other appointments, the one so conferred upon me by State Surveyor-General, Hon. William Minis; and did at the same time determine upon and fix in a contract, the exact compensation I should receive in these premises, copy of which action of the Legislature is hereto attached and made a part hereof, and marked Exhibit No. 21.

My appointment so theretofore made, having been thus ratified and confirmed March 3, 1883, by the highest power known to the State, and my compensation in the premises having been thereby fixed in a legislative contract, I proceeded with renewed diligence to secure for the State the best results possible in these premises, and which results, during the Forty-eighth Congress, consisted in a favorable report being made in behalf of the measure both by the Senate and House Committees on Public Lands, copy of which report (No. 1969) is hereto attached and made a part hereof, and marked Exhibit No. 22.

Notwithstanding having thus received said favorable reports in both Senate and House in behalf of this measure, fearing that we would not secure any final separate action on this claim in the form of an independent bill, as it was now getting late in the session, it occurred to me, in view of such favorable action by the Senate Committee on Public Lands, that the Senate would possibly favorably entertain a proposition to incorporate a provision in the General Deficiency Bill, by way of an amendment thereto, to *cover the amount of said claim as same existed on June 30, 1883.*

With this object in view I prepared an appropriate amendment to the House Deficiency Bill No. 7235 of the first session of the Forty-eight Congress, after said bill had reached the Senate, that would *cover this proposition*, and at my request the late Senator John F. Miller, on June 16, 1884, introduced the same in the Senate, and had it referred to the Senate Appropriation Committee; copy of which amendment is hereto attached and made a part hereof, and marked Exhibit No. 22½.

But the Senate Appropriation Committee failed to give the same any favorable action, so that, notwithstanding sundry efforts made on my part in these premises, I found that it was impossible either to reach or take up in either the Senate or House, this proposition, either as independent bills or as an amendment to an appropriation bill; therefore, the Forty-eighth Congress adjourned without any action on either thereof, other than as herein reported; and both of said bills were on the calendars of Senate and House on the day of final adjournment, and both with a favorable report.

When the Forty-ninth Congress convened I again renewed my efforts in behalf of this same measure, by preparing two more bills to cover this same claim.

In view of the non-arrival of Senator Miller in Washington when the Forty-ninth Congress met, I awaited his arrival, believing that he could take up in the Senate this measure, he having had charge thereof during the Forty-eighth Congress, but when he did arrive, and finding that he was unable to take his seat in the Senate, I thereupon brought this same matter to the attention of the Hon. Leland Stanford, who, on January 11, 1886, at my request, introduced one of said bills, to wit, Senate Bill No. 994, and Hon. Barclay Henley, on December 21, 1885, at my request, introduced the other of said two bills, to wit, H. R. No. 150, copies of which bills are hereto attached and made a part hereof, and marked Exhibits Nos. 23 and 24.

I thereupon prepared an argument to support each of said two bills, and filed same with both the Senate and House Committees on Public Lands, said argument covering about the same grounds as hereinbefore particularly described, and in due time both of said two bills were favorably reported upon, to wit, in the Senate, on the fifteenth of February, 1886, and in the House, on the tenth of March, 1886, copies of which reports (No. 994) are hereto attached and made a part hereof, and marked Exhibit No. 25.

An examination of this report will show, like Report No. 1969, in the Forty-eighth Congress, that said committees adopted quite *verbatim* in the arguments which I had submitted in behalf of this measure, including as their exhibits thereto to both of said reports, the eight (8) tables of statistics in full, as compiled by me and as hereinbefore described.

In due course of proceedings this Senate Bill No. 994 was reached in the Senate calendar, to wit, on May 18, 1886, on which day certain proceedings were had thereon in the Senate, copy of which proceedings is hereto attached and made a part hereof, and marked Exhibit No. 26.

Anticipating that action on this measure would be had in the Senate on May 18, 1886, I was present in the Senate gallery, and noticing what had taken place in regard to this measure, I immediately thereafter sought an interview with Senator Allison, to know his reasons or grounds of objection, and learned from him that he thought this Senate Bill No. 994 proposed to revive, *for California alone*, the provisions of the old Military Bounty Land Warrant Five Per Cent Senate Bill No. 67, and as hereinbefore referred to, and if such was its intention and purpose, he said he desired to submit an amendment to this bill, and such as would include or cover the case of

his State of Iowa; but I informed him that this Senate bill was confined exclusively to proceeds of the *cash* sales of public lands in California, and that its object was solely to place the State of California on the same plane as was at that very time enjoyed by his State of Iowa.

Senator Allison thereupon promised me to look into this Senate Bill No. 994 at his first leisure, and if he found it to be as I stated to him it was, that he would not further object thereto. Later other certain proceedings were had in the Senate on this same bill, to wit, on June 8, 1886, a copy of which is hereto attached and made a part hereof, and marked Exhibit No. 27.

I never was officially informed of the cause of this latter objection by Senator Plumb.

Thereafter, certain other proceedings were had, to wit, on June 19, 1886, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 28.

As Senator Allison had not objected the second time to the consideration of this measure in the Senate, when Senate Bill No. 994 was called up from the Senate calendar, I requested the Hon. Barclay Henley to accompany me on another interview to see Senator Allison, and to ascertain his reasons for his said objection to the consideration of this measure; and he informed Mr. Henley and myself, that while he had no objection himself to this measure, on the contrary, he having duly considered the same, as he had promised to do, and that he favored this bill, yet as Senator Stanford was not present in the Senate on June 19, 1886, or in Washington City when this bill was called up, and as Senator Stanford had prior to his departure from Washington, expressed to him a desire to be present when this bill should be considered in the Senate, that out of respect to Senator Stanford's wishes so expressed, he therefore desired the measure to go over; only this and nothing more.

Thereafter other certain proceedings were had on this bill, on July 9, 1886, and a copy of which is hereto attached and made a part hereof, and marked Exhibit No. 29.

I subsequently learned that Senator Miller of New York, the last objector to this Senate Bill No. 994, had no special reasons for antagonizing the measure contained therein; but as the calendar on July 9, 1886, was being considered under the Senate's five-minute rule, he, thinking that the measure would lead to debate, preferred to have the measure "go over" rather than risk consuming time in its consideration.

And as on this occasion neither of the California Senators were present in the Senate, and as the session was drawing to a close, and as this last objection had the effect to carry this bill over in the list of "bills objected to" on the Senate calendar, which thereby and thereafter would require unanimous consent to call it up, unless that portion of the Senate calendar was under consideration, which it never was again during the session. I therefore determined, in view of all these premises, and to make one more last effort in the Forty-ninth Congress, and similar to that which I had made in the Forty-eighth Congress, to wit, through the Appropriation Committee, by having an amendment proposed to the Sundry Civil Appropriation Bill, and to secure this measure by a general amendment, and which, due to the absence of both the California Senators, I had submitted through Senator Mitchell of Oregon. Copy of this amendment is hereto attached and made a part hereof, and marked Exhibit No. 30.

The Appropriation Committee, however, considering this amendment as proposing new legislation so far as it would include California, deemed it not permissible under the rules of the Senate, and in consequence, it failed to be incorporated in that or in any other appropriation bill.

I thereupon abandoned all hope of securing action on this measure during the last stages of the first session of the Forty-ninth Congress, but only when it was drawing to a final close. As any favorable action that might have been secured in the Senate for this measure at the first session of the Forty-ninth Congress on this separate Senate Bill No. 994, would have failed to receive any recognition in the House, and because by legislative tactics now fully known to the country the House persistently refused to consider any matters on any of its several calendars for more than a month prior to its final adjournment, and for such reasons it failed to take up or consider Mr. Henley's Five Per Cent Bill, No. 164, which had been favorably reported upon by the House Public Lands Committee by the Hon. Barclay Henley, and which bill so stood on its calendar on the day of its final adjournment, I have prepared, and now append hereto and make a part hereof, and marked Exhibit No. 31, a statement of the total cash sales of all the public lands in California made by the United States up to June 30, 1885, showing also the annual simple interest thereof for each year to June 30, 1885, which interest the State has thus far lost, and now continues to lose, at the rate of \$37,131 87 per annum.

This table shows that by the failure of prosecuting this claim prior hereto to a success, the State of California has lost, in simple *interest* alone, the sum of \$424,030 74.

I have thus, step by step, reported to you fully the successive proceedings had by the United States upon this measure during the last eight (8) years since I have had charge thereof as agent and counsel in behalf of the State of California; and I state without any fear of successful contradiction that it has not been due to any fault or laches of mine that the proceeds of this claim have not been as yet placed in cash among the funds of the people of the State of California in their State Treasury.

In conclusion, I beg to report that I shall hereafter renew my efforts in behalf of this measure, knowing as I do, and that which you will readily perceive, that the main work in these premises has already been done by me; and which work in due time must, in my opinion, eventuate in giving California all proper benefits of this meritorious proposition, the proceeds arising therefrom to be expended for such purposes as the Legislature of California may hereafter wisely determine.

And all of which is now very respectfully submitted.

JOHN MULLAN,
Agent and Counsel for the State of California.

No. 2. CALIFORNIA DIRECT TAX CLAIM.

In my capacity as State Agent and Counsel for the State of Oregon, I was called upon, in 1881, by Hon. W. W. Thayer, the Governor thereof, to represent and defend the interests of that State in the matter of its protest against that certain action of the accounting officers of the United States Treasury Department, at Washington, District of Columbia, which consisted in their crediting upon the books of the Treasury Department the earnings of the State of Oregon arising from the five per cent of the net proceeds of the cash sales of the public lands therein, instead of paying the same from time to time over in *cash* to said State, as the same were earned, the said earnings having been used as a *set-off* to Oregon's quota of the direct tax levied under the Act of August 5, 1861, upon said State by the

United States, in the sum of \$35,140 66, and which quota the State of Oregon having assumed but failed to pay, had been treated by the United States as a *debt still due the United States by said State*.

In order to meet this Oregon case as it actually existed, it became necessary for me to carefully study the entire United States direct tax system, and all matters connected therewith; and also to ascertain the principle of set-offs as then and still in vogue as a practice by the accounting officers of the Treasury, to whom I presented such arguments against such practice in the Oregon case as to me seemed valid, but without any successful result.

Having exhausted all executive remedy in this matter, I found it absolutely necessary, therefore, to go to Congress for adequate relief in regard thereto.

It was thus while familiarizing myself with these matters that I discovered a peculiar condition of things relating to the direct tax quota that had been levied upon the State of California, which, somewhat like that of Oregon's direct tax case, might be and I thought could be bettered, and which I was willing to undertake to do if duly authorized. Thereupon I brought the entire matter to the attention of Hon. George C. Perkins as Governor of California, who, after maturely considering the same, conferred upon me, on December 12, 1882, his authority to represent the interests of the State of California therein, and in a commission, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 1.

This matter was thereafter brought by Governor Perkins to the attention of the Legislature of California, in his last annual message to that body, copy of which reference has been heretofore appended, as my exhibit No. 19 to my five per cent report, and to which reference is now made.

The Legislature, having had the subject-matter under its consideration, duly ratified and confirmed my said appointment, and determined upon and fixed in a contract the compensation that I should receive in the premises if successful; and copy of which action has been heretofore appended as my Exhibit No. 21 to my five per cent report, and to which reference is now made.

Having authority, therefore, from the State of California to represent her interests in all matters that related to the adjustment of her quota of the direct tax of \$20,000,000 levied on the several States under the Act of August 5, 1861, I proceeded at the first session of Congress that convened next after the date of my said appointment to bring this matter to the attention of Congress; and having at the same time full authority to represent similar interests of the States of Oregon and Nevada, I brought fully to the attention of their respective delegations in Congress all that was necessary to be known to them in these premises.

This subject seemed to me to divide itself naturally into two subdivisions:

First—To secure for each of said States a recognition of the principle that notwithstanding the expiration of the limitations of time named in the Act of August 5, 1861, which fixed June 30, 1862, and September 30, 1862, as the two dates prior to which, if payment of said tax was made, should entitle the States so paying the same to a rebate of a certain per cent, to wit, if paid prior to June 30, 1862, a rebate of fifteen per cent, or if not paid prior to June 30, 1862, but if paid prior to September 30, 1862, a rebate of ten per cent of the amounts so by them paid; and if paid after September 30, 1862, then no rebate was provided for in the statutes. Yet it seemed to me that if California, Oregon, and Nevada had paid or should pay their respective quotas of said direct tax even subsequent to September 30, 1862, and that without any expense whatsoever to the United States,

that then and in that event each of said States should *in equity* be entitled to receive a rebate of full fifteen per cent on their respective payments, fifteen per cent having been estimated by the United States to be about the cost to the United States to be incurred to put its own Federal machinery in motion in the several States for the purpose of assessing, levying, and collecting said direct tax; so that an equity, in my judgment, could be invoked, if it could be shown that this tax had been eventually collected from said States without the United States incurring any expense whatsoever in the premises.

Second—That as an examination by me of the records in the Treasury Department had disclosed the fact that some of the States had paid their full quota of this direct tax, while others had paid only a portion thereof, and while still others had not paid any thereof, that an equitable adjustment of the whole matter of this direct tax could be found by Congress enacting a law by which there should be refunded to each State the amount of said direct tax that it had already paid, and to release each State from thereafter paying any portion thereof which had not been paid, but which was still due and payable, and for which unpaid balance such State was being treated as a delinquent debtor upon the books of the Treasury Department.

For the purpose of securing the first of these two propositions, in behalf of California, Oregon, and Nevada, I prepared appropriate bills accordingly; and at my request each of the same was duly introduced in the Senate and House, and as follows, to wit:

Senate Bill No. 511, by Honorable James H. Slater, December 10, 1883; for Oregon.

Senate Bill No. 665, by Honorable John P. Jones, December 13, 1883; for Nevada.

Senate Bill No. 810, by Honorable John F. Miller, December 19, 1883; for California.

And in the House, as follows, to wit:

House Bill No. 108, by Honorable Barclay Henley, December 10, 1883; for California.

House Bill No. 953, by Honorable George W. Cassidy, December 11, 1883; for Nevada.

House Bill No. 1310, by Honorable M. C. George, December 11, 1883; for Oregon.

Copies of which bills are hereto attached and made a part hereof, and marked Exhibits 2, 3, 4. In support of said Senate bills, I prepared arguments and submitted same to the appropriate Senate committees to which the same had been referred for reports, and also to each of the Senators who had introduced same respectively, and a copy of which argument is hereto attached and made a part hereof, and marked Exhibit No. 5.

I also prepared an argument in support of said three House bills, and submitted same to the appropriate House committees to which the same had been referred for reports, and also to each of the members of the House who had introduced the same respectively; copy of which argument is hereto attached and made a part hereof, and marked Exhibit No. 6.

Finding that Senate Bills No. 511, for Oregon, and No. 655, for Nevada, had been referred to the Senate Committee on Claims, while Senate Bill No. 810, for California, had been referred to the Senate Committee on Finance, and having made, with the aid of the late Senator Miller of California, several ineffectual and unsuccessful efforts to secure a change of reference of said Senate Bill No. 810, for California, to the Senate Committee on Claims, from the Finance Committee, where I soon discovered

that no favorable action would be had, but where it seemed to me unfavorable action was likely to arise, and desiring that Senator Miller should not be taxed with the responsibility of introducing two separate Senate bills, each having in view only one and having the same object, and to be referred to two different Senate committees, I therefore prepared a second bill, and which Senator Farley, at my request, introduced in the Senate on the ninth day of May, 1884, to wit, Senate Bill No. 2191, for this same object, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 7.

This bill of Senator Farley was referred to the Senate Committee on Claims, my desire being to have one and the same committee report on all three of said bills.

These three bills, to wit, Senate Bills Nos. 511, 655, and 2191, were then referred to Senator Dolph for reports, and he, on May 14, 1884, submitted to the Senate his favorable report (No. 550) on each thereof, copy of which report is hereto attached and made a part hereof, and marked Exhibit No. 7 $\frac{1}{2}$.

By this time, and in view of my observations in seeing said Senate Bill No. 810 going to one committee and said Senate Bills Nos. 511 and 655 going to another and different committee, I concluded it would have been wiser in the first instance to have had only *one* bill in the Senate that would have included all the provisions contained in said three Senate bills; and only *one* bill in the House that would have included all the provisions contained in said three House bills; and so that all three should be considered at one and the same time by one and the same committee. With this object in view, I therefore prepared a separate House bill that would include all the provisions contained in said three House bills, to wit, H. R. No. 108 and No. 953, and No. 1310, and at my request the same was introduced in the House on twenty-eighth of April, 1884, by Hon. John R. Glascock, H. R. 6772, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 7 $\frac{1}{2}$. I also suggested to Senator Dolph that when reporting back said three Senate bills that he would report one substitute for the whole, and in view of the character and merit of the subject of said bills and the lateness of the session rendering action on these bills as separate measures difficult, if not impossible, to secure an order of reference of his said report from the Senate Committee on Claims to the Senate Committee on Appropriations; and Senator Dolph, therefore, acquiescing in my suggestion, when submitting his said report, submitted one bill as a substitute for said three Senate bills, to wit, Nos. 511, 655, and 2191, and in this form, on the fourteenth day of May, 1884, he submitted the same to the Senate as an amendment to be proposed to the General Deficiency Appropriation Bill, and asked its reference to the Senate Committee on Appropriations, and a copy of which substitute and said amendment is hereto attached and made a part hereof, and marked Exhibit No. 8.

In this shape this measure to grant California, Oregon, and Nevada, respectively, fifteen per cent of their full quota of the direct tax, as levied upon them under the Act of August 5, 1861, passed the Senate, and thereafter went to the House for its action thereon. The House refused to concur therein, whereupon this bill was thereafter referred to a conference committee composed of three (3) members of the Senate and three (3) members of the House, and before which conference committee I appeared and renewed all the arguments in support thereof similar to those which I had hitherto submitted to the Senate and House committees, and finally said conference committee agreed to recommend to their respective houses

the passage of said measure, and which recommendation having been concurred in, said bill passed both Senate and House, and became a law on the seventh day of July, 1884.

In the House, on the other hand, we could not secure not only any favorable action, but, on the contrary, the general subject of direct tax legislation developed various antagonisms, but none of which seemed to me to rest on any valid foundation; but these antagonisms, such as they were, were sufficient to prevent any final action thereon during the Forty-eighth Congress, other than herein stated. These antagonisms will be hereafter referred to by me when reporting upon the *second branch* of this direct tax subject.

This bill, granting California, Oregon, and Nevada a rebate of fifteen per cent on their full quota of this direct tax, having become a law on the seventh of July, 1884, I immediately thereafter requested the proper accounting officers of the Treasury to state an account in behalf of the State of California for the settlement of this claim. This statement was made on July 23, 1884, in Treasury Report No. 43,395, in the office of the Fifth Auditor, and confirmed by the First Comptroller of the Treasury on August 22, 1884; copy of all of which is hereto attached and made a part hereof, and marked Exhibit No. 9.

California's quota of this direct tax of \$20,000,000, levied under the Act of August 5, 1861, was \$254,538 67, and upon which she had paid in second quarter, 1862, as follows, to wit:

After September 30, 1862, to wit, on October 7, 1862, the sum of	\$63,839 31
And during first quarter 1863.....	183,606 10
.....
Making a total payment only of	\$247,445 41
Leaving unpaid and due on October 8, 1875, the sum of.....	7,093 26

In evidence whereof see letter of Hon. C. C. Fairchild, Acting Secretary of Treasury, dated July 14, 1886, inclosing the manuscript Certificate of Settlement No. 10,813, made seventeenth March, 1874, by Fifth Auditor, and confirmed eighth October, 1875, by the First Comptroller of the Treasury, and hereto attached and made a part hereof, and marked Exhibit No. 10.

This sum of \$7,093 26 due the United States by the State of California, and unpaid at the date of the said settlement made in said Report No. 10,813 (see manuscript certificate), by Fifth Auditor of the Treasury, March 17, 1874, and confirmed by First Comptroller October 8, 1875, had been on February 8, 1884, reduced to \$6,597 54, by crediting California with the sum of \$495 72 on account of the "*Modoc Indian war claim*" (and to which full reference will be by me hereafter made in my Report No. 3 on California's Modoc Indian war claim), and which reduction will fully appear from Settlement No. 39,283, made February 7, 1884, by the Fifth Auditor, and on February 8, 1884, confirmed by the First Comptroller of the Treasury, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 11.

Therefore, on July 7, 1884, the date of the passage of this fifteen per cent rebate bill, the State of California was still indebted to the United States on account of the balance due on her quota of this direct tax, in the sum of \$6,597 54, and as fully appears in said Settlement No. 43,395, and made by the Fifth Auditor on twenty-third July, 1884, and confirmed by the First Comptroller on twenty-second August, 1884, same being my Exhibit No. 9 herein.

In making this final settlement between the United States and the State of California, the first thing, therefore, done by the Fifth Auditor of the Treasury, was to credit the State of California with fifteen per cent of her whole quota of said direct tax, to wit, \$254,538 67.

And which fifteen per cent thereof was and is.....	\$38,180 80
And to thereafter deduct therefrom the amount of said balance of.....	6,597 54
Leaving due California by the United States a cash difference of.....	\$31,583 26

And for which a draft upon the Sub-Treasurer in San Francisco, to the order of the Governor of California, was delivered to me by the Secretary of the Treasury, and which was by me delivered to the Governor of the State of California in August, 1884, and the proceeds whereof (less the commission due me, and as fixed by my contract with the Legislature on March 3, 1883) were duly paid by you into the State Treasury; and as fully appears in your message to the Legislature, dated January 5, 1885, extract from which covering this special reference is hereto attached and made a part hereof, and marked Exhibit No. 12.

In order that you may fully understand how, as late as October 8, 1875, the State of California became indebted to the United States in the sum of \$7,093 26 on account of her quota of said direct tax, I desire to report that the State of California having, under the Act of her Legislature approved April 12, 1862, assumed the responsibility of collecting and paying the whole of her quota of \$254,538 67 of the direct tax of \$20,000,000 levied by the United States under the Act of Congress, approved August 5, 1861 (U. S. Statutes, vol. 12, page 296), and having provided, as she did, all the necessary and proper State machinery for levying and collecting the same, that prior to September 30, 1862, there had been collected of this direct tax, and paid into the State Treasury of California in *gold coin*, the sum of \$70,932 56 $\frac{2}{3}$.

Hon. R. D. Ashley, then State Treasurer, and in possession of said \$70,932 56 $\frac{2}{3}$ in gold coin, converted the same into greenback currency, and prior to September 30, 1862, made a tender of such currency to the United States Sub-Treasurer at San Francisco, California, in part payment of California's quota of said direct tax. Said Sub-Treasurer, D. W. Cheeseman, Esq., knowing that this sum had been collected in gold coin, and not in currency, claimed that it should have been paid by Mr. Ashley into the United States Treasury in the gold coin in which it had been so collected. This Mr. Ashley declined to do, whereupon the question was referred to the honorable Secretary of the Treasury at Washington for decision, and that officer directed the Sub-Treasurer to receive the tax in currency, as it was so tendered.

But by the time this decision and order was received at San Francisco back from Washington, the thirtieth of September, 1862, had come and gone, and as this law authorized a rebate only in the event that an actual payment should be made *on or prior to September 30, 1862*, at the very latest, and as the money was not, as a matter of fact, actually paid over by Mr. Ashley to the United States until *after September 30, 1862*, to wit, *on October 7, 1862*, the United States refused to recognize the claim of the State of California to any rebate in the premises.

But Mr. Ashley, taking a different view, and asserting that the State of California was entitled, in his opinion, to a rebate at least of 10 per cent on said \$70,932 56 $\frac{2}{3}$, did himself deduct 10 per cent thereof, to wit, \$7,093 25 $\frac{2}{3}$, which he turned into the State Treasury, and the balance, to wit, \$63,839 31, he paid over to the United States as a first installment

and in part payment of California's said direct tax quota. But the United States never recognized either this claim of rebate or this system of discount and of bookkeeping on the part of the State of California; but, on the contrary, the United States simply credited the State of California with the amounts of money which she had actually paid, to wit, said \$63,839 31, and subsequently, to wit, in 1863 (when the legal time within which *any* rebate could be claimed had fully expired, and that too without question), with a second payment of \$183,606 10, aggregating a total only of \$247,445 41, and the United States charged California with the amount she had not paid, to wit, \$7,093 26, and which charge ever remained upon the books of the Treasury as a debt against the State of California due the United States until it was liquidated by having been paid and canceled by deducting this debt of \$7,093 26 from the two credits which I had been enabled to secure and collect for the State of California, and in the manner hereinbefore fully stated, to wit :

First—By the California Modoc Indian war claim in the sum of.....	\$495 72
Second—And so much of the fifteen per cent on \$254,538 67 as was necessary to make up the balance of said debt of \$7,093 26, to wit.....	6,597 54
Aggregating the sum of.....	\$7,093 26

And as has been fully set forth in the settlements hereinbefore referred to, and filed as exhibits. The explanation made by Mr. Ashley in regard thereto, is hereto attached and made part hereof, and marked Exhibit No. 13. From Mr. Ashley's own report you will therefore perceive that he made the effort to secure for California a rebate of ten per cent on a payment of \$70,932 56 $\frac{2}{3}$, stating that *that sum was all that could possibly be recovered or saved to the State of California in this direct tax matter*, but which claim the United States never allowed and never recognized, while it also fully appears herein that I made the effort to secure for California a rebate of fifteen per cent on the whole of her quota of \$254,538 67 of this direct tax, which I succeeded in recovering and collecting: and the same has already been paid into the State Treasury of California in the manner aforesaid, and all of which was had and done by me under the authority conferred by Hon. George C. Perkins, when Governor of California, and duly ratified by the Legislature of California on the third of March, 1883, and as hereinbefore fully set forth.

SECOND.

The second subdivision in the adjustment of this direct tax matter, as I viewed the same, consisted in securing such legislation by Congress as should enable the Secretary of the Treasury to refund to each State such portion of this direct tax as it had paid, and to relieve any State from paying such portion thereof as it had not paid.

In order to accomplish these results, I prepared two bills, one of which, to wit, Senate Bill No. 795, was, at my request, introduced in the Senate on the eighteenth of December, 1883, by the late Senator Hon. John F. Miller: and the other, to wit, H. R. No. 110, at my request, was introduced in the House on the tenth day of December, 1883, by Hon. Barclay Henley of California.

A somewhat similar bill, to wit, H. R. No. 6047, was introduced by Mr. Price, of Wisconsin, copies of which bills are hereto attached and made a part hereof, and marked Exhibits No. 14 and No. 15, respectively.

In support of these two bills I prepared arguments, and submitted the same to the proper committees having charge thereof, to wit, the Finance Committee in the Senate and Claims Committee in the House, and gave

the members of the California delegation duplicates thereof, copies of which are hereto attached and made part hereof, and marked Exhibits No. 16 and No. 17, respectively.

Said Senate Bill No. 795, at the request of Hon. W. E. Earle, State Agent for South Carolina, was referred to the honorable Secretary of the Treasury by Senator Hampton, of South Carolina; and said House Bill No. 110, at my request, was referred to the honorable First Comptroller of the Treasury by Hon. Barclay Henley of California, to secure the views of these two officers, who in due time submitted to Congress terse reports thereon, copies of which are hereto attached and made a part hereof, and marked Exhibits No. 18 and No. 19, respectively.

The general subject-matter having thereafter been maturely considered in the House by its Committee on Claims, that committee, on the fourth day of February, 1885, made a majority favorable report, through Mr. Price of Wisconsin, to wit, Report No. 2486, Part 1, second session Forty-eighth Congress, and a minority report, Part 2, through Mr. Warner, copies of which are hereto attached, made parts hereof, and marked Exhibit No. 20.

It is due to the history of this case that I should here state that this direct tax matter having been referred to the House Committee on Claims, was by it referred to Hon. A. J. Warner, as a sub-committee to examine into and report thereon to the full committee. Thereafter I got Hon. Barclay Henley to accompany me several times to interview Hon. A. J. Warner on this bill, and I was soon convinced that he was not only not favorably disposed in the matter, but he finally had prepared an adverse report thereon, and which he finally submitted to his said committee and asked its adoption as the views of the majority of said committee. Discovering this fact, the friends of this measure were immediately interviewed, and the result was that Mr. Price of Wisconsin, a member of said committee and a warm friend of this measure, was selected by its friends to make a minority report, and to thereafter move its adoption as a substitute for Mr. Warner's majority report, all of which was done; whereupon Mr. Price's minority report was adopted and became the majority report of that committee, and Mr. Warner's report, which he had expected would be the majority report of said committee, instead thereof became the minority report, so that both reports and history of each are herewith submitted for your information.

But this majority report was made so late in the session—as Congress adjourned March 4, 1885—that favorable action thereon was a matter of legislative impossibility during the Forty-eighth Congress.

But sufficient, however, had already been done, by virtue of the foregoing showing, to disclose to Congress that to discriminate between those States that had assumed and paid their full quota of this direct tax, and those States that had neither assumed nor paid the same, or any portion thereof, was a distinction without a difference.

If Congress was vested with constitutional jurisdiction to levy and apportion said tax as made, then those States upon which it was levied were legally obligated to raise and pay the same, or failing so to do, then to submit to such legal penalties as were provided for in the Act of August 5, 1861, that directed the levy to be made, and not to do as Mr. Bennett of North Carolina desired to have done, to wit, to release the delinquent States from further paying up their quota of this tax, and, as provided for by him in a bill, to wit, H. R. No. 6713, by him introduced twenty-first April, 1884 (and without making any provision for those States that had already paid this tax) copy of which bill is hereto attached and made a part hereof, and marked Exhibit No. 21.

If, on the other hand, this direct tax was not constitutionally levied upon the several States, as States—as in some high quarters had been assumed and argued—then it seemed to me that fair dealing suggested that those States—like California, for instance—which had responded by paying promptly, and without questioning the constitutionality of the tax, or the regularity of the levy and collection, should now be refunded and reimbursed the several amounts they had so heretofore paid to the United States; and when this was done, *then*, in my judgment, it would be in order to release the delinquent States from further paying their delinquent debts, *but not before*.

While the foregoing proceedings were being had in the House, we were not successful in securing any *direct* action upon Senator Miller's Bill No. 795, in the Senate; but yet, by virtue of an effort to have Congress pay the State of Georgia the sum of \$35,555 42, on account of an old revolutionary war claim, the attention of the Senate and of the country was called to this meritorious measure, and, as will appear in the manner following, to wit, on March 28, 1884, Senator Brown of Georgia, introduced Senate Bill No. 1948. A similar bill, to wit, H. R. No. 4703, was introduced in the House by Mr. Hammond of Georgia, on February 5, 1884, both having this object in view.

A somewhat similar bill, to wit, Senate Bill No. 595, had been introduced on December 11, 1883, by Senator Colquitt of Georgia, and a report (Senate No. 124) had been made thereon by Senator Hoar, on February 6, 1884, and which bill proposed to reimburse the State of Georgia the sum of \$22,567 42, on account of expenses in that sum by her incurred on account of an old Indian war claim arising therein between 1795 and 1818, and which bill became a law, but the accounting officers of the Treasury, instead of paying over to Georgia in *cash* the sum thereby appropriated, simply credited that State with the amount thereof on the books of the Treasury, as a set-off against Georgia's quota of the direct tax then unpaid and delinquent, and as a payment *pro tanto* thereon, and hence the reason for the language used in Senator Brown's Georgia Bill, No. 1948, and Mr. Hammond's House Bill, No. 4703, *which proposed to repeal, and annul, and vacate any law, or ruling, or decision of the accounting officers of the Treasury that had undertaken, or should undertake, to use the money so appropriated as a set-off to said direct tax then delinquent and due by Georgia to the United States*, and copies of which Bills Nos. 1948, 4703, and 595, and Reports Nos. 124 and 752, are hereto attached and made a part hereof, and marked Exhibits Nos. 22 and 23.

Apparently so fixed had the House Judiciary Committee of the Forty-eighth Congress become in its conviction that some remedy was needed to adjust *by law* a practice of set-offs that had grown up *without law* among the United States Treasury officials at Washington, that a general bill, to wit, H. R. No. 7082, therefor, was reported from the Judiciary Committee on the twentieth of May, 1884, by Mr. Hammond, as a substitute for H. R. No. 6867, together with a report thereon, to wit, House Report No. 1658, copies of which bill (H. R. No. 7082) and Report No. 1658 are hereto attached and made part hereof, and marked Exhibit No. 24.

A favorable report, to wit, Senate Report No. 592, was also made by Senator Hoar on Senator Brown's Georgia Bill, No. 1948, on the twenty-eighth day of May, 1884, copy of which report is hereto attached and made a part hereof, and marked Exhibit No. 25.

It was during the discussion of Senator Brown's Georgia Bill, No. 1948, and of the Report No. 592 that was made thereon by Senator Hoar on the twenty-eighth of May, 1884, that the acrimonious but celebrated debate

between Senator Brown of Georgia and Senator Ingalls of Kansas occurred in the Senate on the twelfth of June, 1884.

Prior to said discussion in the Senate, Senator Dolph of Oregon, believing with me that said Senate Bill, No. 1948, and said Senate Report No. 592 made thereon, secured a discrimination in favor of Georgia, which had not yet paid her quota of this direct tax, as against California and Oregon (among other States), that had paid the same, at my request submitted, on the twenty-eighth of May, 1884, an amendment to said Senate Bill, No. 1948, having for its object *to place California and Oregon on the same plane as was then sought to be occupied by Georgia in said Senate Bill No. 1948*; copy of which amendment is hereto attached and made a part hereof, and marked Exhibit No. 26.

The discussion of this Senate Bill No. 1948 and the report made thereon led to a motion to recommit the same back to the Claims Committee, that had reported thereon, and an aye and nay vote having been taken thereon, it was carried, by ayes twenty-one and nays seventeen; but immediately after the vote had been taken it was discovered, and the point was raised, that a *quorum* of the Senate had *not* voted; and upon motion of Senator Ingalls, therefore, the Senate adjourned; and as the Senate prior to this had agreed that when the Senate adjourned it should adjourn till Monday, the Senate thereupon adjourned till the following Monday, leaving this bill and the subject-matter to which it related as *unfinished business*.

This was on Thursday, June 12, 1884, and the Senate adjourned to the following Monday, June 16, 1884.

I had observed that this motion to recommit this Senate Georgia Bill No. 1948 was not accompanied with any instructions from the Senate, and it further occurred to me that this occasion was the opportune period at which the adjustment of this entire subject might be made general by substituting the provisions contained in Senator Miller's general bill, to wit, Senate Bill No. 795, for those contained in Senator Brown's special Georgia Bill No. 1948. I immediately laid my views before Hon. W. E. Earle, State Agent for South Carolina, who had ever cooperated with me in the premises, and whose State had overpaid this tax, and hence as her State Agent was as anxious as myself for a satisfactory adjustment of this whole subject. Therefore, during the interval, Mr. Earle and myself held several interviews with Senator Brown of Georgia and the late Senator Hon. John F. Miller of California, having this object in view, and which, at our joint request, finally resulted as follows, to wit: in open Senate, before any further vote should be had on Senator Brown's Georgia Bill No. 1948, that Senator Miller should offer his Senate Bill No. 795 as a substitute for Senator Brown's Georgia Bill No. 1948, and that Senator Brown would agree to accept the same. This agreement was fully carried out, and on the following Monday, to wit, *June 16, 1884, Senator Miller, in open Senate, submitted, by way of an amendment, his said Senate Bill No. 795 as a substitute for Senator Brown's Georgia Bill No. 1948, and which was duly accepted by Senator Brown and ordered to be printed and lay on the table*; copy of which amendment and substitute is hereto attached and made a part hereof, and marked Exhibit No. 27.

The first session of the forty-eighth Congress was now drawing to a close, and it adjourned without any further action on this measure, which stood on the calendar of the Senate in the form of unfinished business.

In view of what had then already taken place on said Senate Bill No. 795 and said House Bill No. 110, I deemed it proper and my duty to bring the same to the attention of the Legislature of California at its next session, to wit, in January, 1885; and for this purpose I submitted a report thereon

to your office. Thereafter, the Legislature, having had the matter under its consideration, did, on the third of March, 1885, pass Senate Concurrent Resolution No. 26, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 28.

Copies of this resolution having been forwarded to me by the honorable Secretary of State, under the seal of his office from Sacramento, were by me filed with the appropriate committee in both Senate and House, and given to the members of our California delegation in Congress.

A Presidential election having taken place when the short and last session of the Forty-eighth Congress convened, other matters seeming to engross the attention of that body, there was an evident disposition not to consider this measure. Surely the fact is that though every effort proper was made by me and other friends of this bill to secure consideration thereof, the Forty-eighth Congress finally adjourned without any definite action being had thereon in either the Senate or House other than hereinbefore stated.

In consequence thereof, when the Forty-ninth Congress convened, I renewed my efforts in this same direction, and with this object in view I prepared two bills, to wit: House Bill No. 164, and which, at my request, was introduced by Hon. Barclay Henley on twenty-first December, 1885; and also one substantially the same was introduced by Mr. Price of Wisconsin, on January 1, 1886, in H. R. No. 2776, in harmony with the Report No. 2486, which he had made on February 4, 1885, on this same subject from the Committee on Claims; and in consequence of the absence and illness, which ended in death, of Senator Miller of California, who had charge of this measure during the Forty-eighth Congress, as hereinbefore fully reported, at my request, Hon. Leland Stanford introduced the other of said bills in the Senate on the eleventh day of January, 1886, to wit, Senate Bill No. 995; copies of which bills are hereto attached and made parts hereof, and marked Exhibits No. 29, No. 30, and No. 31, respectively.

Senate Georgia Bill No. 1948, and House Bill No. 4703, having failed to receive in the Forty-eighth Congress any action in either the Senate or House, other than that hereinbefore described, were revived in the Forty-ninth Congress by the introduction by Senator Brown of Georgia, of Senate Bill No. 2457, which latter was favorably reported in Report No. 1138, by Senator George from the Judiciary Committee, on May 18, 1886; copy of which bill and report is hereto attached and made a part hereof, and marked Exhibits No. 32 and No. 33.

And by Mr. Hammond, by the introduction in the House of special bill, to wit, H. R. No. 1, and also by a general bill, to wit, H. R. No. 3, on December 19, 1885, and upon which bill, H. R. No. 3, a Report No. 35 was made from the Judiciary Committee, on the nineteenth day of January, 1886; copies of which bills and report are hereto attached and made parts hereof, and marked Exhibits No. 34 and No. 35 and No. 36, respectively.

The views contained in this House Report were antagonized by Mr. Earle and myself, and we were finally successful in securing a favorable minority report in the House on twenty-ninth January, 1886, on this direct tax matter, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 37.

When this Georgia Bill H. R. No. 3, was, on February 8, 1886, reached in the House for consideration, Mr. William E. Earle and myself again submitted a statement in writing in regard thereto, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 38.

Whereupon several friends of our view of this measure, to wit, Messrs. Price of Wisconsin; Taylor of Ohio, Culbertson of Texas, Ranney of Massa-

chusetts; Hepburn of Iowa, and Little of Ohio, duly supported the same in arguments which will fully appear in Exhibit No. 39, hereto attached and made parts hereof.

In addition thereto, Mr. Price submitted his bill, No. 2776, as a substitute for said House Georgia bill, and Hon. John T. Little of Ohio, offered an amendment to Mr. Hammond's said Georgia bill, copy of which is hereto attached, and marked Exhibit No. 39½.

In addition thereto, by special appointment made therefor, the views of Mr. Earle and myself were, on April 20, 1886, laid before Hon. J. R. Eden of Illinois, Chairman of the sub-committee of the House Judiciary Committee having charge of this direct tax measure, in an oral argument; and with whom we submitted sundry written and printed statements on the night of April 20, 1886; and next day supplemented same with a written statement, copy whereof is hereto attached and made a part hereof, and marked Exhibit No. 40.

In the Senate, Mr. Earle and myself succeeded in having Senator Hampton (who had taken a great interest in Senator Miller's Senate Bill No. 795 of the Forty-eighth Congress, and who it was that wrote as aforesaid to Secretary Folger at Mr. Earle's request in regard thereto, which called out the Secretary's report thereon, and as hereinbefore filed as an Exhibit No. 18) introduce on May 24, 1886, a substitute for Senator Brown's said Georgia Bill No. 2457, copy of which substitute is hereto attached and made a part hereof, and marked Exhibit No. 41.

This substitute contained substantially all the matters contained in Senator Stanford's Senate Bill No. 995 and Hon. Barclay Henley's House Bill No. 164, heretofore filed as Exhibits Nos. 29 and 31.

In this connection we called Senator Hampton's attention to the fact that the report of the Senate Judiciary Committee on Senator Brown's Georgia Bill No. 2457 rested on a *wrong theory*, and because from an examination by me made of the laws of the States of Georgia and Texas I found that both Georgia and Texas had, as a matter of fact, assumed the payment of their quotas of this direct tax, and Georgia had, under an Act of her Legislature, authorized the issuance of interest-bearing bonds with which to pay her quota of this direct tax, and as will fully appear from copies of the laws of Georgia and Texas thereon, hereto attached and made parts hereof, and marked Exhibits No. 42 and No. 44, respectively.

On July 14, 1886, Senator Hampton, in support of his substitute for Senator Brown's Georgia Bill No. 2457, and which was substantially identical with the substitute which at my request had been offered in the Forty-eighth Congress by Senator Miller of California, as a substitute for Senator Brown's Georgia Bill No. 1948 in the Forty-eighth Congress, submitted an argument in support of this substitute, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 44.

As the accounts between the several States and the United States arising under the settlements had on this direct tax, were constantly changing, and thereby the *status* of each, in relation to this direct tax matter, at the end of every settlement was different from what it had been theretofore reported to be, and as this was particularly true in the case of the State of California, *which then owed nothing to the United States*, and as a considerable time had elapsed since Congress had been officially supplied with authentic data in regard to the exact amount of debt then due the United States by any of the States which had been reported as delinquent in the payment of their respective quotas thereof, I deemed it wise, whenever this measure should be next under consideration, that its friends in Congress should be in possession of the very latest facts in regard thereto;

whereupon I prepared a resolution of inquiry, which, at my request, was introduced in the House by the Hon. Barclay Henley, in order to secure this information, copy of which resolution is hereto attached and made a part hereof, and marked Exhibit No. 45.

This resolution having been considered and modified by the appropriate committee, was transmitted to the honorable Secretary of the Treasury, who, on March 31, 1886, made a reply thereto, as set forth in House Executive Document No. 158, first session, Forty-ninth Congress (copy of which is hereto attached and made a part hereof, and marked Exhibit No. 46), and which gives the *latest* published official information on this important matter.

While Senator Dolph of Oregon was willing, in the Forty-eighth Congress, to submit, and did submit, an amendment in the Senate to Senator Brown's Georgia Bill No. 1948, by which if at that time Georgia was to secure her \$35,555 42 *in cash*, that Oregon, under his said amendment, would also receive *in cash* her \$35,140 67, and as set forth in said amendment (copy of which has been heretofore attached and made a part hereof, and marked Exhibit No. 26), yet he was not so confident that the proposition contained in Senator Hampton's said substitute exactly suited the views or interests of the people of the State of Oregon, thinking, as he stated to me, "that while Oregon, under Senator Hampton's amendment, would secure *in cash* her \$35,140 67 that she already had paid as her quota of this direct tax, yet he also thought that in the end the *people of Oregon would be taxed to raise a sum larger than said \$35,140 67*. In other words, that he thought that Oregon, in the event of Senator Hampton's substitute becoming a law, *would have to pay out more money than the people of Oregon would get back.*"

Learning, therefore, that Senator Dolph was liable to antagonize Senator Hampton's said substitute whenever it should be considered by the Senate, and deeming it my duty, as agent and counsel herein for the State of California, to answer in a proper manner, and at all proper times and places, all antagonisms to this general measure, as contained in said Senate Bill No. 995 of Senator Stanford, and in said H. R. No. 164, as introduced by Hon. Barclay Henley, whenever and wherever the same could be properly done, I, as late as July 20, 1886, having had several interviews with Senator Dolph thereon, submitted to him for his consideration an argument in support of the views by me hereinbefore expressed, and directed especially against his impression thereon, then taking shape and form, and copy of which argument is hereto attached and made a part hereof, and marked Exhibit No. 47.

Though every proper effort was made by me to have this measure considered in both the Senate and House during the first session of the Forty-ninth Congress, yet there never seemed to me or to any other friends thereof to be that opportunity when either body had the time sufficient, or the inclination towards the favorable consideration of this measure, to take up and maturely weigh the same, and, therefore, the first session of the Forty-ninth Congress adjourned with this measure on the calendars of both Houses in an unfinished condition, and in the manner hereinbefore more fully set forth.

I have thus, step by step, given you the history of this measure, beginning with the Forty-eighth Congress (before which date it had never before been considered in either House of Congress, and when considered in the Forty-eighth Congress, the same was had and done solely through my agency), and ending at the first session of the Forty-ninth Congress.

I make this report, thus detailed and specific, in order that you and the people of California may fully know all that has been done in regard to this particular claim; and in order that a full account of my stewardship and agency in these premises may become a matter of official record in connection therewith, and for future reference.

In conclusion, I beg to report to you that I shall hereafter renew my efforts in behalf of this measure, knowing, as I do, that the *main work in the premises has already been done by me*, and which work, in due time, must, in my opinion, eventuate in giving California all the proper benefits of this meritorious proposition, the proceeds arising therefrom to be expended for such purpose as the Legislature of California may hereafter wisely determine.

All of which is now very respectfully submitted.

JOHN MULLAN,
Agent and Counsel for the State of California.

No. 3. MODOC INDIAN WAR CLAIM.

In my capacity as State Agent and Counsel for the State of Oregon, I was called upon, in 1881, by Hon. R. P. Earhart, Secretary of State thereof, to represent and prosecute the interests of that State in the matter of its claim against the United States, on account of certain expenses by it incurred for the suppression of Indian hostilities on its southern border, *during the Modoc Indian war, in 1872, 1873, and 1874*. I discovered that the State of California, and certain of its citizens residing in Siskiyou and Modoc Counties therein, had also incurred sundry expenses in this same Modoc Indian war, *NO CLAIM for the payment of which had ever been urged by the State of California or by her citizens against the United States*; and which claims, though small in amounts, were in my judgment valid, and such as I thought I could secure if properly so authorized. Knowing, as I did then, and do now, that no claim can be prosecuted or urged before the Treasury Department except by a party in *propria persona*, or by another acting therein under a written letter of authority or power of attorney, I therefore brought the entire matter to the attention of Hon. George C. Perkins, Governor of California, who, after maturely considering the same, on March 7, 1882, conferred upon me his authority to represent the interests of the State of California and her people therein, and in a commission, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 1.

This matter was thereafter brought by Governor Perkins to the attention of the Legislature of California in his last annual message to that body; copy of which reference has been heretofore appended as my Exhibit No. 19 to my "*five per cent report*" herein, and to which reference is now made.

The Legislature of California having had the subject-matter under its consideration, duly ratified and confirmed my said appointment, and determined upon and fixed in a contract the compensation that I should receive in these premises if successful, copy of which action has been heretofore appended as my Exhibit No. 21 to my "*five per cent report*" herein, and to which reference is now made.

Having authority, therefore, from the State of California to thus represent all matters that related to the adjustment of its interests in these premises, I prepared a suitable bill to cover this claim, which, at my request, the late Senator, Honorable John F. Miller, on seventeenth March, 1882, intro-

duced in the Senate, to wit, Senate Bill No. 1502. I therefore prepared an argument in support of said bill, and presented same to the Committee on Military Affairs, to which said bill had been referred for examination and report, and on twenty-second March, 1882, a favorable report, to wit, Senate Report No. 306, was made thereon by Senator Harrison. Copies of which bill and report are hereto attached and made a part hereof, and marked Exhibit No. 2.

I also prepared a similar bill for this same purpose, which, at my request, was, on the thirteenth day of February, 1882, introduced in the House by Hon. C. P. Berry, to wit, H. R. No. 4244, a copy of which is hereto attached and made a part hereof, and marked Exhibit No. 3.

Senate Bill No. 145, limited as it was *exclusively to Oregon* in order to provide for its Modoc Indian war claim, had theretofore been prepared, and at my request had been introduced in the Senate on the sixth day of December, 1881, by Senator Grover of Oregon, and which had been favorably reported upon on February 2, 1882, in Senate Report No. 114, copies of which bill and report are hereto attached and made a part hereof, and marked Exhibit No. 4.

At the date when this Oregon Senate Bill No. 145 had been introduced and reported upon in the Senate, it did not occur to me to suggest to Senator Miller that when said Oregon's Senate Bill No. 145 should be considered in the Senate *to amend same by incorporating therein a provision for California's Modoc Indian war claim.*

The said two bills, to wit, Senate Nos. 145 and 1502, were therefore called up and considered and acted upon *as two separate measures*, and both of said two bills passed the Senate on March 27, 1882, but as two separate and independent measures.

When said two bills reached the House they were both referred to the House Committee on Military Affairs, before which Committee I appeared as counsel and agent for both of said separate bills Nos. 145 and 1502, and suggested to said committee that these two bills might be appropriately considered together by *being consolidated*, and which could be done by adding to said Senate Bill No. 145, which then consisted of only one section, *a second section, that should cover the provisions contained in said California Senate Bill No. 1502*, and all of which was done; and thus amended by the House, said Senate Bill No. 145 was favorably recommended to the House, where it passed, and was returned to the Senate for its concurrence, which it secured, and also passed and became a law on the sixth day of January, 1883 (U. S. Statutes, vol. 22, page 399), a copy of which is hereto attached and made a part hereof, and marked Exhibit No. 5.

This bill, authorizing the proper accounting officers of the Treasury to adjust the accounts of the State of California against the United States arising in California during the Modoc Indian war of 1872 and 1873, having thus become a law. I thereupon requested the statement of an account by the proper accounting officers of the Treasury, in behalf of the State of California, for the settlement of this claim.

The statement was thereupon duly made by the Third Auditor of the Treasury, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 6, and shows that *the United States was indebted to the State of California on account of sundry claims arising in said Modoc Indian war in the sum of \$495 72.*

But this sum of \$495 72, instead of being paid over *in cash* to the State of California, was credited to her upon the books of the United States Treasury Department by the proper accounting officers thereof, and *used as*

a set-off and a payment, *pro tanto*, by the State of California to the United States on account of the sum of \$7,093 26, said sum being a debt then due the United States by the State of California on account of a balance arising in the settlement of the direct tax accounts between the United States and the State of California, and all of which fully appears in Settlement No. 39,283, made by the Fifth Auditor on February 7, 1884, believing, as they substantially stated, that all indebtedness arising under said Act of April 25, 1857, had been amply provided for and fully adjusted and confirmed by the First Comptroller of the Treasury on February 8, 1884, and as appended as my Exhibit No. 11, to my report in the *direct tax claim* hereinbefore made, and to which reference is now made.

While the State of California did not receive the payment of this claim *in cash*, yet she did receive *full credit therefor on account of a debt unpaid, and then due by her to the United States*, and as herein fully set forth, so that the matter was as broad as it was long, in so far as California's financial relation with the United States was concerned; but I beg to report that the total sum claimed by the State of California, as due her as a State by the United States, was allowed, appropriated, and paid, by *giving her a credit for the full amount thereof*; and which adjustment, so made, thus finally terminated this particular claim, collected by me under the authority conferred by Honorable George C. Perkins, as Governor of California, and duly ratified by the Legislature of California, on the third day of March, 1883, as aforesaid.

It may be information to you to know that Congress, also, at that same time, by virtue of my efforts therein exercised in their behalf, under this same authority conferred upon me by Governor Perkins and the Legislature of California, made ample provision for the reimbursement of the payment of certain specific claims of sundry citizens, then living in Modoc and Siskiyou Counties, in California, and aggregating a total sum of \$3,945 61, which sum, together with said \$495 72, made a total aggregate of \$4,441 33, as named in said law.

Some of these allowances so provided for have been already paid to the citizens of California entitled thereto, while others remain still unpaid, but all of which will be paid by the United States whenever the beneficiaries of that legislation, if living, or their heirs if dead, shall duly present their claims and make their identity legally known to the proper accounting officers of the Treasury, at Washington City.

And all of which is now very respectfully submitted.

JOHN MULLAN,
Agent and Counsel for the State of California.

No. 4. CALIFORNIA INDIAN WAR CLAIMS.

The examinations which I had made, and especially those made in 1881 and 1882, in connection with the Modoc Indian war claims arising in California and Oregon, in 1872 and 1873, brought me in contact with the general subject-matter of other California Indian and other war claims, some of which, by the United States, had been settled in full, some settled only in part, and some not settled at all. I had already had a limited experience before the California Legislature in 1872, 1874, and 1876, as attorney in behalf of the holders of certain California Indian war bonds and coupons, theretofore issued by her in payment of certain expenses that had been incurred therein, on account of Indian hostilities, and suffi-

cient to convince me that the State of California—improperly, as I thought then, and think now—was in no mood to either pay or to recognize said claims.

Believing, therefore, in 1882, that the true, if not the only remedy of the State of California, and that left to those of her citizens who still held any valid evidences of these unpaid debts growing out of Indian and other hostilities in the State of California, and upon the borders thereof, lay in presenting the same fully and intelligently before the proper United States authorities at Washington City, I, in June, 1882, duly brought this entire subject-matter to the official attention of her then Governor, Hon. George C. Perkins, who, after having maturely considered the same, authorized me to represent the interests of the State of California in all these premises; and in a commission, copy of which is hereto annexed and made a part hereof, and marked Exhibit No. 1, and which appointment so made, the Legislature of California, by its action had thereon third March, 1883, duly validated, ratified, and confirmed, and did therein fix the compensation that I should receive in these premises if successful; and, as will fully appear in copy of said action, and which has been heretofore filed by me as my Exhibit No. 21, in my report on the five per cent claim, and to all of which reference is now made.

No one, in my opinion, knew better than Governor George C. Perkins of the many efforts that had been made prior to 1882 to secure recognition, adjustment, and full payment of all these old Californian Indian war claims; and he also knew that most of the efforts that had theretofore been made in regard thereto, and for the adjustment thereof, either before the Legislature of California or before the United States authorities, had resulted in signal failures; and he also knew, as every intelligent man must know, that the longer any settlement looking towards the payment of these old claims was delayed, that the chances for success therein would diminish, and grow more and more doubtful year by year, and probably in the end fail *in toto*.

Governor Perkins, when a State Senator from Butte County in the Legislature of the State of California in 1872 (and before which Legislature and its proper committees I had appeared as attorney to represent certain claimants holding certain valid evidences of this old California Indian war debt, then and now unpaid and due said holders by the State of California), was made the Chairman of a joint committee of the Senate and House that had been created by the Legislature of that year to examine into and report upon the general subject of the California Indian war indebtedness as the same existed in 1872.

This joint committee made their full report to the Legislature on the twenty-first of February, 1872, copy of which report is hereto attached and made a part hereof, and marked Exhibit No. 2.

A bill in harmony with, and to carry out the recommendations contained in this report, was thereupon framed, and which bill passed the California Senate in 1872, but failed to pass the California Assembly. Thereafter other strenuous efforts made at the meetings of subsequent Legislatures to secure favorable action on this subject-matter had also all proved equally abortive and equally barren in favorable results.

I do not know, in fact, of any one subject-matter that has ever been brought so constantly, or pressed so frequently or so vigorously before the attention of the Legislature of California, or for so long a period of time—for this has been done certainly from 1852 to 1878—as this one subject of the indebtedness created by the State of California growing out of its Indian hostilities in early years, and as a reference to the messages of the

several Governors of California will attest, and as the various resolutions passed by her Legislature, and reports of her State officers, will fully confirm. Extracts from some of these messages, and resolutions, and reports, are hereto attached and made parts hereof, and marked Exhibit No. 3.

A perusal of these last exhibits will serve to show, in part at least, the very unsatisfactory condition of the several branches of this claim of the State of California against the United States at the date when I took charge of these California Indian war claims. It appears that California, when not paying sundry of these claims *in cash*, as she did, made ample provision for their ultimate payment by the issuance of interest-bearing bonds, and which were paid to individual claimants in full satisfaction of their claims against the State of California, and as provided for in the Acts of her Legislature approved February 15, 1851, May 3, 1852, and also by the issuance of certain non-interest bearing bonds, as provided for in the Act of the Legislature approved April 25, 1857, and in Acts amendatory thereof and supplemental thereto.

Up to this date there are still afloat in the hands of *bona fide* holders and of the officers of the State of California (which last, though paid by the State of California, have not yet been paid by the United States), claims aggregating several thousands of dollars arising under each of the aforesaid Acts of February 15, 1851, May 3, 1852, and April 25, 1857.

Strange as it may appear, yet the fact is, that while the aforesaid joint committee of the Legislature of 1872 had been appointed to report upon the *full history* and *total amount* of *all* the then unpaid and outstanding indebtedness arising on account of Indian hostilities in California and upon the borders thereof, yet that joint committee, so well composed as it was, with the Hon. George C. Perkins as its Chairman, made no reference whatsoever to any of the indebtedness which was then outstanding and unpaid, and which arose under the Act of the Legislature approved April 25, 1857, and Acts amendatory thereof and supplemental thereto, but, on the contrary, confined their said report exclusively to so much of said outstanding and unpaid indebtedness as arose under the Acts of January 15, 1851, and May 3, 1852, only, and not otherwise.

In view of the fact that, as my labors in the past have been, and those in the future will be, directed to matters arising under *all* of said Acts, so too my report therefore will include a proper reference to all proceedings had under *each* and *all thereof*, as well as to those arising under such other and different special Acts and resolutions of the Legislature of California as have taken place therein between September 9, 1850, and the first of November, 1886, the date of this report.

In my efforts in 1881, as State Agent and Counsel for the States of Oregon and Nevada, it became necessary for me to secure for them appropriate legislation by means of which they could be reimbursed for the expenses by them incurred, respectively, on account of the war of the rebellion, and which legislation had been made necessary by virtue of the provision contained in Section No. 3489 of the United States Revised Statutes, and which is as follows, to wit:

SECTION 3489. *No claims against the United States for collecting, drilling, or organizing volunteers for the war of the rebellion shall be audited or paid unless presented before the thirtieth day of June, eighteen hundred and seventy-four. No claims for horses lost prior to the first day of January, eighteen hundred and seventy-two, shall be audited or paid unless presented before the thirtieth day of June, eighteen hundred and seventy-four.*

The States of Oregon and Nevada had permitted the thirtieth of June, 1874, to come and go without having presented to or filed with the proper United States authorities at Washington, D. C., under the Act of Congress

approved July 27, 1861, any claim against the United States for the expenditure of money by them incurred during the war of the rebellion (United States Statutes, volume 12, page 276). At my request, therefore, and in view of the provisions of said Section No. 3489 of the United States Revised Statutes, on December 12, 1881, Senator Grover of Oregon introduced in the Senate, Senate Joint Resolution No. 10 for Oregon, and on December 13, 1881, Senator Fair of Nevada, also introduced Senate Joint Resolution No. 13 for Nevada, and both of which joint resolutions were referred to the Senate Committee on Military Affairs, of which Senator Grover was then a member, and he, on May 12, 1882, reported back to the Senate a bill, to wit, Senate Bill No. 1673, as a substitute for both of said two resolutions, and which bill had for its object, among other things, to provide for the examination, audit, and report to Congress of the expenses of said two States arising therein between fifteenth April, 1861, and date of the passage thereof, copy of which Bill No. 1673 and of his Report No. 575, made thereon May 12, 1882, is hereby attached and made a part hereof, and marked Exhibits No. 4 and No. 5.

Having discovered that the *State of California was in no better or different position in regard to her rebellion war claims than the States of Oregon and Nevada*, I, therefore, brought the same to the attention of the late Senator, Hon. John F. Miller of California, and who, on June 8, 1882, submitted an amendment to Senator Grover's said Senate Bill No. 1673, so as to include California. Other amendments having been made in the Senate to this Senate Bill No. 1673, and such as should include the States of Colorado and Nebraska, said bill passed the Senate on the eighth day of June, 1882, and went to the House, where it was still further amended so as to include the State of Kansas, and so amended, it passed the House on June 20, 1882, and went back to the Senate, where upon the motion of Senator Maxey of Texas, said House amendments were concurred in on the same date, June 20, 1882, and said Senate Bill No. 1673 became a law by the approval of the President on June 27, 1882; copy of which law is hereto attached and made a part hereof, and marked Exhibit No. 6.

This law was broad enough to cover not only certain Indian war claims of California, Oregon, and Nevada, but also those arising in each thereof during the late war of the rebellion, and under this law I have heretofore filed the rebellion war claims and Indian war claims for the States of Oregon and Nevada, and certain Indian war claims and also the rebellion war claims of the State of California (but as to the latter, California's rebellion war claims, a full reference and report thereon will hereinafter appear in a separate paper).

In order to present to the United States authorities in proper form, all the evidences of all the expenses that had been incurred by the State of California on account of the Indian hostilities that had occurred therein, and for which provision had been made by the passage of this Act of June 27, 1882, it has been necessary for me to make annually a trip from Washington City to Sacramento, California, from 1882 to 1886, inclusive, and to there remain several weeks each time, in studying into the history of the legislation that has been heretofore had in regard to this subject by the State of California; and in examining into many thousands of papers and various records and books in the offices of the Governor, Controller, Treasurer, Secretary of State, and Adjutant-General: also to have made certified copies of such books, records, and other archives, which originals could not be spared from said offices, or being not of the classes I had been authorized by the Legislature to receipt for and use when pressing said claims before the United States authorities, and such as were, in my judg-

ment, necessary to have daily at hand in my office at Washington, for an intelligent presentation of these claims to said United States authorities.

These certified copies of said books, records, archives, and sundry papers *have all been paid for at my own expense*, aggregating quite a large sum, and *made without any cost whatsoever to the State of California*, and because the terms of the contract made with me by the Legislature of California provided that, whereas my fee was to be entirely contingent and to be paid only in the event of my success, that the State of California under no circumstances should incur any expenses of any kind on account of this or of any of these other several claims; so that if the State of California in the end failed to secure any recognition and payment for any of these several claims, *she would not be at any expense in the premises, and all of which expense devolved upon me to meet and pay, and all of which I have done.*

The examinations by me made into these several claims soon disclosed the fact that said Act of Congress, approved June 27, 1882, while ample to meet California's rebellion claims, was not adequate to meet fully all her Indian war claims, and because outside of the claims for the war of the rebellion, most of the war claims in California had arisen prior to fifteenth April, 1861, and *for those Indian war claims arising prior to fifteenth April, 1861, said Act failed to make any provision*, as said Act, by its own terms, was declared by the United States authorities to be limited exclusively to those claims that had arisen in California subsequently, and not prior to fifteenth April, 1861.

This condition of things I thereupon made known to your office by appropriate reports, whereupon you conferred upon me your authority to represent among other things, such of these California claims as might not have been covered by or included in any prior appointment (copy of said authority is hereto appended and marked Exhibit No. 7), and which appointment so made, the Legislature of California, on the third of March, 1885, duly validated, ratified, and confirmed in Senate Concurrent Resolution No. 3, copy of which is hereto appended and made a part hereof, and marked Exhibit No. 8.

In order, therefore, to meet this new condition of things, I prepared an appropriate resolution, and presented the same to Hon. W. S. Rosecrans, then in Congress from California, who, at my request, introduced the same in the House of Representatives on the twenty-fifth day of February, 1884, and which was referred to the House Committee on Military Affairs, and of which he was then Chairman. I thereafter prepared an argument in support of said resolution, and submitted the same to the House Committee on Military Affairs, whereupon the matter was favorably reported upon from said committee on March 18, 1884, copy of which resolution and Report No. 807, made thereon, are hereto attached and made part hereof, and marked respectively Exhibits Nos. 9 and 10.

The phraseology of said resolution was slightly changed by said committee, and for reasons set forth in a letter to me from General W. S. Rosecrans, of January 21, 1885, original of which is hereto attached and made a part hereof, and marked Exhibit No. 11.

An examination of said Report No. 807 will show that said committee fully used my said argument as their appendix "B" in support of said resolution.

While urging this view of the case, I also prepared sundry other separate and independent bills to meet these same California Indian war claims, and at my request the same were duly introduced in the House and Senate, and as follows, to wit:

H. R. No. 50, by Hon. W. S. Rosecrans, December 10, 1883.
 H. R. No. 69, by Hon. W. S. Rosecrans, December 10, 1883.
 H. R. No. 6099, by Hon. Barclay Henley, March 24, 1884.
 H. R. No. 6669, by Hon. Barclay Henley, April 21, 1884.
 H. R. No. 7975, by Hon. Barclay Henley, January 19, 1885.
 H. R. No. 8149, by Hon. Barclay Henley, February 2, 1885.
 Senate Bill No. 809, by Hon. John F. Miller, December 19, 1883.
 Senate Bill No. 811, by Hon. John F. Miller, December 19, 1883.
 Senate Bill No. 1917, by Hon. John F. Miller, March 24, 1884.
 Senate Bill No. 1970, by Hon. John F. Miller, April 1, 1884.

Copies of which are hereto appended and made parts hereof, and marked Exhibit No. 11 $\frac{1}{2}$.

In support of these sundry bills, I prepared and filed with the appropriate committees in both Senate and House, and the California delegation in Congress, sundry arguments, copies of which are hereto attached and made a part hereof, and marked Exhibit No. 12.

Notwithstanding frequent and often importunate efforts on my part to secure action on some of the bills in the House, and particularly by the House Committee on War Claims, to which most of the same had been referred, and though Mr. Tully of California was a member of the House War Claims Committee, I was unable during the whole of the Forty-eighth Congress *to even get said bills considered*. It is true, certain days were fixed by said committee at which it was agreed to hear me in an oral argument thereon, but when such days arrived said committee could not and did not muster a quorum of its members; and the consequence was that our California Indian war claims, no adequate provision of law then existing, went by the board, unacted on and unconsidered during the whole of the Forty-eighth Congress.

In this dilemma, I made the effort to secure a recognition of at least a portion thereof, by an appropriate amendment therefor to one of the appropriation bills; and with this object in view, I prepared an amendment, supported by proper correspondence, and which, at my request, was introduced by Hon. Barclay Henley, and duly submitted to the House Committee on appropriations, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 13. But this effort bore no good fruit.

In the Senate the aforesaid Senate bills fared no better fate. Senator Miller's Senate Bill No. 809 was referred to Senate Committee on Military Affairs, and after sundry correspondence between that committee and the War Department that bill was unfavorably reported upon, and as will fully appear in Senate Miscellaneous Document No. 40, and Senate Report No. 158, first session Forty-eighth Congress, copies of which are hereto attached and made a part hereof, marked Exhibit No. 14.

The impossibility of holding such bills in the Senate after adverse action had been had thereon, is fully set forth in a letter to me by the late Senator Hon. John F. Miller, dated April 2, 1884, original of which is hereto attached and made a part hereof, and marked Exhibit No. 15.

Not set back by this unfavorable action, I prepared appropriate amendments to be proposed to the appropriation bills then pending in the Senate, and at my request the same were presented by Hon. Senators Farley and Miller, copies of which are hereto appended and made parts hereof, and marked Exhibits No. 16 and No. 17, respectively.

Prior to this date and in order to fortify myself with all official statistics needed in order to show to Congress just exactly the true history thereof, Hon. James T. Farley and Hon. C. P. Berry, of California, and Hon. James

H. Slater of Oregon, at my special request, made sundry calls upon the Treasury Department in regard thereto, and copies of the correspondence had thereon are hereto attached and made a part hereof, and marked Exhibit No. 18, same being:

1. Letter of Hon. C. P. Berry to Third Auditor, of December 23, 1882.
2. Reply of Third Auditor thereto, of January 3, 1883.
3. Letter of Hon. Secretary of Treasury, January 8, 1883, with a statement of Third Auditor, of January 8, 1883.
4. Letter of Hon. Secretary of the Treasury to Hon. James T. Farley, of January 15, 1881, with letter of Third Auditor, of January 11, 1881.
5. Letter of Third Auditor to Hon. James A. Slater, January 24, 1883.

While the foregoing was being done in Congress, I also made two separate and distinct efforts before the Treasury Department to secure recognition of at least a portion of these claims, and duly submitted the same to the Third Auditor of the Treasury, even under existing laws; and with this object in view I filed with that officer classified abstracts of said claims, and supported same by vouchers in tabulated form and in large bound volumes, copies of which abstracts are too large to now appear herein as exhibits in this report, but which I now file in your office, and call them my Exhibit No. 19 to this report.

The results of the action had thereon by the Third Auditor is set forth in his letters to me of the eighteenth August, 1885, and November 23, 1885, copies of which are hereto attached and made parts hereof, and marked Exhibits No. 20 and No. 21, respectively.

In order to throw official light upon a portion of these claims, and in order that the Senators and Representatives in Congress from California should coöperate with the State authorities in securing such legislation by Congress as should secure their favorable recognition, and ultimately the final payment, the Legislature of California, on March 30, 1878, adopted Assembly Joint Resolution No. 73, and under which the late Hon. W. B. C. Brown, on May 27, 1878, as Controller of the State of California, submitted to Hon. Wm. Irwin, then Governor of California, an official report upon these California Indian war claims, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 22.

It will be observed that the late Controller Brown limited his reports to such claims and outstanding and unpaid indebtedness as had arisen under the Acts of February 15, 1851, and May 3, 1852; his report being as a matter of fact more silent than that of said joint committee upon such claims as had arisen under the Act of April 25, 1857, and Acts amendatory thereof and supplemental thereto. An impression in 1872 and in 1878, and even up to the time I took hold of these claims, seems to have existed, that all indebtedness arising under said Act of April 25, 1857, and Acts supplemental thereto and amendatory thereof, had been all fully adjusted, which is not a fact.

Having thus exhausted every proper effort for both an executive and legislative remedy in these premises during the Forty-eighth Congress, I thereupon, to wit, on January 20, 1885, submitted to you a report in writing, accompanied with a printed statement that related exclusively to the cases that then existed under the aforesaid Acts of February 15, 1851, and May 3, 1852, reserving to myself the intention and duty to report to you at a subsequent date and in another report such claims as had arisen under other Acts of the Legislature of California.

As many of the matters by me presented to you in my said report are important to be known in connection herewith, I now append hereto a copy of said report and make the same a part hereof, and mark it Exhibit No. 22.

When the Forty-ninth Congress convened I renewed my efforts in behalf of these same measures and in the manner following, to wit:

I prepared, and at my request they were introduced in the House of Representatives, as follows, to wit:

H. R. No. 153, December 21, 1885, by Hon. Barclay Henley of California.

H. R. No. 155, December 21, 1885, by Hon. Barclay Henley of California.

H. R. No. 5566, February 16, 1886, by Hon. Barclay Henley of California.

H. R. No. 8732, May 10, 1886, by Hon. Barclay Henley of California.

H. R. No. 8149, February 2, 1885, by Hon. Barclay Henley of California.

Copies of which are hereto appended and made a part hereof, and marked Exhibit No. 23.

In support of these bills I appeared before the House Committee on War Claims, by appointment granted me therefor, and submitted to said committee an oral argument, and on February 22, 1886, I further submitted a special argument in writing in support of said H. R. No. 5566, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 24.

Whereupon said War Claim Committee, on twenty-third March, 1886, submitted to the House a favorable report, to wit: House Report No. 1298 on said bill, H. R. No. 5596, a copy of which bill as amended by said committee, and of its Report No. 1298 made thereon, are hereto appended and made a part hereof, and marked Exhibit No. 25.

It will be observed by the reading of said report, that said War Claims Committee recommended that California be granted nearly all that I had claimed in her behalf; the principal exception being that of *interest* on the principal she had borrowed or expended in these premises, and as I was then engaged in endeavoring to secure for California such interest as she had actually paid out on all of her war claim expenditures, and in a separate and independent bill (a report upon all of which will hereinafter more fully appear), I deemed it wise not to antagonize that particular recommendation of the War Claims Committee, but to await the proper time, and then meet the same whenever said separate bill for interest should be under consideration in either the Senate or in the House, and in the meanwhile to accept this action of the War Claims Committee, which at that time seemed to me to be the very best that I could secure at its hands.

While thus engaged in securing from Congress by appropriate and separate bills the most favorable report possible in behalf of these measures, I framed sundry letters of inquiry, which, at my solicitation, the Hon. Barclay Henley addressed to the proper officers of the Treasury Department, replies to which, under date of March 20, 1886, from Third Auditor, and June 22, and July 2, 1886, from the Assistant Secretary of the Treasury, are hereto attached and made parts hereto, and marked Exhibit No. 26.

Having thus secured a favorable report on the aforesaid H. R. No. 5566, and having also, and that too in an official form, been put in possession of such authentic information regarding some of these claims as might be appropriately used by the House Committee on Appropriations if it were disposed to use the same, I thereupon framed sundry communications of request, which, at my solicitation, the Hon. Barclay Henley addressed to the Hon. Samuel I. Randall, Chairman of said committee, the intention thereof being to secure, by a proper amendment to the appropriation bills, *provision to cover some of these claims*, copies of which communications are hereto appended and made parts hereof, and marked Exhibit No. 26½.

Failing to secure by this proceeding at the hands of said committee in the House that favorable recognition of these measures which I thought they were then justly entitled to receive, I thereafter renewed the same by

similar efforts in the Senate, where, at my request, Senator Stanford, on sixth of April, 1886, submitted to the Senate Indian Appropriation Bill H. R. No. 5543, an amendment having this same object in view, copy of which is hereto appended and made a part hereof, and marked Exhibit No. 27.

At my request also, Senator Hearst submitted to the Deficiency Appropriation Bill H. R. No. 9726, an amendment also having this same object in view, copy of which amendment, together with a printed statement prepared by me in support of said amendment so proposed by Senator Hearst, is hereto appended and made a part hereof, and marked Exhibit No. 28.

These efforts of mine in the Senate proved to be as barren of favorable results as had attended my similar efforts in the House, so that the first session of the Forty-ninth Congress adjourned, leaving the legislation prepared and proposed to adjust these claims, and in the manner herein outlined, in an unfinished state. Progress, however, more than had ever before been made in regard thereto had been secured, and because the provisions contained in H. R. No. 5566 vests in the proper United States authorities power to examine, and audit, and pay all Indian war claims arising in the State of California and upon the borders thereof (including the redemption of certain California Indian war bonds), between September 9, 1850—date of the admission of California in the Union—to April 15, 1861, on which last named date the Act of June 27, 1882, would take up the remainder of such claims, to wit. those arising between April 15, 1861, and June 27, 1882, so that by these two Acts, taken jointly, California would have ample authority of law under and by which to have in time duly examined and audited and paid all claims arising therein and upon the borders thereof between September 9, 1850, and June 27, 1882, and whether the same included Indian war claims or claims arising during the war of the rebellion, and which she has heretofore paid.

In addition to the foregoing, and in order that the State of California should be fully reimbursed for expenses by her incurred for the payment of *certain Indian depredation claims*, and in order that her citizens also might be fully reimbursed for expenses and losses of property by them incurred on account of various Indian depredations in California, and for which, as the several exhibits submitted herewith fully show, the Legislature has *so often* besought Congress to enact adequate legislation, in order that same be paid, and *all of which efforts had up to this time proved fruitless*, I prepared three bills, which at my request were introduced in the House of Representatives by Hon. Barclay Henley of California, to wit. H. R. No. 5209, on February 8, 1886, and H. R. No. 8080, and H. R. No. 8082, on April 19, 1886. Similar bills were also at my request introduced in the Senate by Senator Dolph of Oregon, and supported by an argument, the statistics of which were prepared by my associates, Messrs. Charles and William B. King, and myself.

After various efforts to secure action on these House bills by the House Committee on Indian Affairs, to which the same were referred, that committee granted Messrs. King and myself several audiences, where and when we submitted sundry oral arguments. That committee favorably reported a substitute for all of said bills and sundry others, all relating to the same subject, to wit. H. R. 9729, on the thirtieth June, 1886, with a favorable report, to wit, House Report No. 3117. Copies of all of which are hereto attached and made a part hereof, and marked Exhibit No. 29.

No action was taken on this measure in the Senate. It is therefore my high privilege to be enabled to report to you, that *for the first time in the history of Congressional legislation has any committee of either the House of*

Representatives or of the Senate ever recommended the passage by Congress of a general bill to meet and pay for losses sustained on account of Indian depredations throughout the United States.

My own judgment ever has been, and now is, that the only proper way to secure relief for the State of California, and for those of her citizens who have sustained losses in this class of cases, was, not by a *special*, but by a *general* bill, and for this reason, in this case, and in sundry other claims in which California had an interest in common with the other States, I thought the proper proceeding to be had was by *general legislation*.

In conclusion, I beg to report to you that I feel quite confident that in due time all California Indian war claims will receive full attention at the hands of the proper United States authorities, and wherefore I shall hereafter renew my efforts in behalf of these several measures, knowing, as I do, that the main work in these premises has already been done by me, and which work, in due time, must, in my opinion, eventuate in giving the State of California all proper benefits of these equitable claims, when the proceeds arising therefrom can be expended for such purposes as the Legislature of California may hereafter wisely determine.

All of which is now very respectfully submitted.

JOHN MULLAN,

Agent and Counsel for the State of California.

No. 5. REBELLION WAR CLAIMS.

My examination into the general subject-matter of the rebellion war claims of the States of Oregon and Nevada, whose agent and counsel I for several years last past have been and still am, brought me naturally in contact with similar matters arising in the State of California.

Prior to November 27, 1879, not knowing that any appointment had been made by any officer, or by the Legislature of the State of California, to represent these California rebellion claims, I wrote to Hon. William Irwin in relation thereto, and in reply he told me he would consult with the Attorney-General (then Hon. Jo Hamilton) in regard thereto.

A long time elapsing, and not hearing further from either Governor Irwin or from Attorney-General Hamilton in regard thereto, on November 27, 1879, I wrote to Hon. James A. Johnson, then Lieutenant-Governor of California, and requested him to see Attorney-General Hamilton in my behalf in regard thereto. To this letter Hon. James A. Johnson replied on December 2, 1879, in a letter, original of which is hereto attached and made a part hereof, and marked Exhibit No. 1.

Following up the information contained in said letter, I had knowledge for the first time that the Legislature of California had, on March 1, 1872, by Senate Concurrent Resolution No. 36 (California Statutes 1871-1872, page 958), made provision for the presentation to the proper United States authorities at Washington of its rebellion war claims; and by it I also learned, that though seven years had come and gone, there had not been any presentation of said claims, or anything done in regard to same up to twenty-sixth February, 1881, when the Legislature of California passed a second, to wit, Senate Concurrent Resolution No. 12, in regard thereto (California Statutes 1881, page 100), copies of which resolutions and of the action had thereunder by Hon. Newton Booth and Hon. George C. Perkins, when Governors of California, are hereto attached and made a part hereof, and marked Exhibit No. 2.

Thereafter the provisions of Section No. 3489, United States Revised Statutes, came to my knowledge, and wherein it was provided as follows, to wit:

Section No. 3489. No claims against the United States for collecting, drilling, or organizing volunteers for the war of the rebellion, shall be audited or paid unless presented before the thirtieth day of June, eighteen hundred and seventy-four. No claims for horses lost prior to the first day of January, eighteen hundred and seventy-two, shall be audited or paid unless presented before the thirtieth day of June, eighteen hundred and seventy-four.

In view of the matters therein contained, I brought this subject-matter to the attention of the late Senator, Hon. John F. Miller, and who, to remedy this matter, in so far as California was concerned, moved, at my request, to amend Senator Grover's Oregon and Nevada Rebellion Claim Bill No. 1673, as hereinbefore reported, by inserting "California," so that by the passage of the Act of Congress of June 27, 1882, there was enacted ample provision of law by which all of California's rebellion war claims could thereafter be examined, audited, and reported by the proper accounting officers of the United States Treasury to Congress for final payment.

After the passage of said Act of Congress of June 27, 1882, under arrangements made between Hon. James E. Hale and Thomas M. Nosler and myself, I was placed in possession of all the papers, vouchers, and documents and evidences in support of portions of these claims, which for ten (10) years had laid in Washington City boxed up, unacted on, unclassified, and unexamined for any purpose whatsoever.

Finding these claims in much confusion, and that many thereof were missing and many links of valid evidence needed to properly support the same for presentation to the United States authorities, and there being no evidence of payment filed with any thereof, and because the Controller's original warrants drawn in payment thereof, and upon which in nearly all cases are indorsed a proper receipt, *were not filed with any of these claims*, I thereupon called upon State Treasurer January to surrender to me such of these original warrants issued in payment of these claims as, having been paid and canceled, were then on file in his office.

The chief value of these paid and canceled warrants at that time was that they constituted *original evidence* to the United States of payment by the State, and should have been surrendered by the State of California as so many sub-vouchers to support her claim for reimbursement by the United States.

Mr. January, however, declined to accede to my request, and refused to surrender to me or to my duly authorized agent any of said paid and canceled warrants for such public use.

In the preparation, classification, and abstracting of and placing with each the exact evidence that pertained thereto, I had to proceed, therefore, *without* such original warrants, and until such time as the Legislature should next meet, and when its authority for the delivery to me of all such original warrants, and of any other original papers that I might need in the proper presentation of these claims would be invoked.

This matter was therefore brought to the attention of the Legislature that convened in January, 1885, and that body, after fully considering the same, did among other things, duly authorize the surrender to me of all said original warrants; and as will fully appear from copy of its action had in regard thereto on March 3, 1885, and which has been heretofore filed as my Exhibit No. 8, in my report on "*California Indian War Claims*," and to all of which reference is now made.

These warrants were subsequently got together, boxed, and sent by express to me, at Washington City, *at my expense*. Each warrant was thereafter duly placed with the particular claim to which it belonged, and in payment of which it had been issued by the Controller of the State of California. The work of the proper classification, and abstracting, etc., of all the evidences in support of this rebellion claim—involving, as it did, the handling and rehandling and careful examination of over 100,000 papers—has had my attention, with the aid of never less than three and sometimes that of five clerks, continually for the four years last past. I therefore now have the honor to report to you that, on the eighteenth day of September, 1886, I duly filed all the papers, vouchers, warrants, and other evidences in support of the rebellion war claims of the State of California with the honorable Secretary of the Treasury, whose duty it is also made under said Act of June 27, 1882, to examine and report upon the whole thereof. (See copy of letter to the Secretary of the Treasury for September 18, 1886, and of affidavit therein referred to, and made a part hereof, and marked Exhibit No. 9.)

These papers occupy eight large packing boxes; the abstracts thereof alone comprise bound volumes, and which abstracts have been by me prepared on heavy sheets of paper, eighteen inches by twenty-three inches, and strongly and neatly bound in separate volumes; and all this, too, has been done *at my own expense*.

Duplicates of these several abstracts in twenty-one bound volumes, one each for Abstracts A, B, C, D, E, F, G, H, K, L, M, N, O, and three of P, and five of Q, have also been made by me, and all of which I now submit you herewith, and which volumes will constitute a permanent record in the proper State office in evidence of at least a part of the work that has been done by me in regard to these claims, and which, possibly, may prove of some value as books of reference whenever any matter in regard to any of these claims shall hereafter arise.

No injury whatsoever has occurred to the State of California by virtue of any delay while these papers were in my custody for examination and proper preparation prior to filing the same with the proper United States authorities, and because even had they been filed prior to the date when they were actually filed by me, no action whatsoever would have been had thereon, and because similar rebellion war claims, that over two years ago had been filed by me for the States of Oregon and Nevada, lay unacted upon in the War Department; and because of the allegation by Hon. Robert T. Lincoln, Secretary of War, that the aforesaid Act of June 27, 1882, under which said Oregon and Nevada claims were to be examined, imposed upon the War Office new and additional duties, without at the same time placing at his disposal new or additional force for this examination, and that he wanted Congress to appropriate the sum of \$25,000 to aid him to do his work, and in its annual estimates in 1884 and 1886 the War Department made a call for this \$25,000 for said purpose.

Learning, therefore, the cause of the non-action in the War Department on these claims, I called the matter to the attention of Senator Dolph, of Oregon, who, on February 19, 1885, submitted an amendment to the Sundry Civil Appropriation Bill, to appropriate said \$25,000 for this purpose, but this amendment failed to secure any favorable action in the Senate.

I also, on February 16, 1885, brought this matter to the attention of Hon. O. Welborn of Texas, in a communication, copies of which are hereto attached and made a part hereof, and marked Exhibit No. 2½.

Nothing having been done in these premises during the Forty-eighth Congress, the matter was by me called to the attention of Senator Maxey

of Texas, who, as a member of the Committee on Military Affairs when the said Act of June 27, 1882, became a law, had taken much interest therein, and because of the fact that Texas was one of the States named in the said Act of June 27, 1882, and he had an interview with the Secretary of War, Mr. Endicott; whereupon the Secretary of War, on January 27, 1886, wrote Senator Maxey a letter, a copy of which is hereto appended and made a part hereof, and marked Exhibit No. 3; whereupon Senator Maxey, on the twenty-ninth of January, 1886, introduced in the Senate a bill to meet this special want, to wit, Senate Bill No. 1284, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 4.

No action having been taken on this separate Bill No. 1284 of Senator Maxey, and, appreciating as I did (probably even more than any other one person, for I now represented three of the States named in said Act of June 27, 1882, to wit, California, Oregon, and Nevada, that were then and are now interested in this proposed legislation) the importance of getting some early action by the War Department in these premises, I again brought this matter to the attention of Senator Maxey, who at my request, on the first day of July, 1886, introduced an amendment to the Sundry Civil Appropriation Bill (H. R. No. 9478) to appropriate said \$25,000, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 5.

The Senate Committee on Appropriations would not recommend an appropriation for this particular sum, but did recommend an appropriation for this purpose of \$7,500, but which sum was, on July 24, 1886, upon the motion of Senator Allison of Iowa, increased to \$10,000.

When this particular amendment was reached in the Senate, on July 24, 1886, a long and acrimonious debate was had thereon, so much so that even said appropriation of \$10,000 came very near being lost, and as will fully appear from copy of said proceedings had thereon in the Senate, on the twenty-fourth of July, 1886, hereto appended and made a part hereof, and marked Exhibit No. 6.

Having discovered in the examination of these claims that certain original evidence in a part thereof was wanting, and all of which in my judgment was necessary for the War Department to have and in order to validly support the same, and after diligent search made by me in Sacramento, aided by Controller John P. Dunn, and his assistant, J. M. O'Reilly, of the Controller's office, and by General George Cosby and his son, and by his assistant, Colonel Tobin, and by two State Treasurers and their assistants, and by the Secretary of State, and having failed to find the missing links of that evidence which was so necessary to have in my judgment, I deemed it proper to secure the passage of a law by Congress, whereby we could use such *secondary evidence* as might be available in these premises, and a bill for this purpose was therefore prepared by me, and at my request was introduced in the Senate, on December 13, 1883, by Senator Jones of Nevada, and favorably reported upon on January 13, 1885, by Senator Dolph, but which bill failed to pass, copies of which bill, No. 656, and report thereon, No. 984, are hereto attached and made a part hereof, and marked Exhibit No. 6½.

Wherefore I renewed my efforts in the same direction in the Forty-ninth Congress, and at my request Senator Dolph of Oregon, on December 8, 1885, introduced in the Senate, Senate Bill No. 71, and which was favorably reported upon in the Senate on February 3, 1886, and favorably reported upon February 17, 1886, in the House, in House Report No. 572, and became a law on the fourth of August, 1886. Copies of which bill and of said law are hereto attached and made a part hereof, and marked Exhibit No. 7.

You therefore have in the foregoing synopsis, a history of a portion of my efforts, covering a long period of time and accompanied with much labor of myself and of my assistants, all of whose services, together with the expenses necessarily incident to the preparation in proper form of these claims, have been all met, and all paid for exclusively at *my own expense*.

Immediately after the adjournment of Congress, to wit, on the eighteenth of September, 1886, I requested the honorable Secretary of War, in writing, to create the Board of three army officers which the aforesaid law vested in him authority to do, and which Board was ordered on October 6, 1886, to be convened, and as will appear from copy of the War Department Order No. 282 issued therein, and now hereto attached and made a part hereof, and marked Exhibit No. 8.

When said Board shall have examined and considered the claims of the State of California, the results of their examination from time to time I have no doubt will be submitted to me, and my further action thereon will depend upon the *character* of their examination by said Board, and a report on all of which will thereafter be submitted by me to your office for its information, and that of the Legislature of California, and of such other parties as may be interested therein.

All of which is now very respectfully submitted.

JOHN MULLAN,
Agent and Attorney for the State of California.

No. 6. CLAIM OF INTEREST EARNED BY THE STATE OF CALIFORNIA ON WAR CLAIMS.

My examination into the subject-matter of the several war claims of the States of California, Oregon, and Nevada disclosed the fact that said States had in some instances been compelled to *borrow money* with which to pay *cash* for some of these claims, and to pay *interest* on the sums so borrowed and so paid out on account of said claims, while in other instances they had *issued interest-bearing bonds*.

It therefore appeared to me that if these States had a valid claim against the United States for the reimbursement to them of the *principal* which they had respectively expended in the payment of those expenses which constituted a proper charge against the United States, that these same States also had an equally valid claim against the United States for the reimbursement to them by the United States of such *interest* as they had paid out when compelled to go into the money markets of the country to borrow money with which to pay said claims.

This proposition appeared to me to be both logical and equitable, and while it was true that Congress, when legislating on July 27, 1861, to reimburse the several States of the Union for such expenses as by them had been incurred during the war of the rebellion, *had not made any provision for the payment of interest on the principal therein provided for* in the event any State had to borrow said principal, and had not made any provision for the payment of interest in any of its other special acts that related to any one of these three States where said States had paid interest, yet it appeared to me that it was in all respects proper for me to endeavor to secure the enactment of a law by Congress by which this claim, which existed only in equity, *should be recognized by law*.

For this purpose I framed two special bills limited in their provisions to California, Oregon, and Nevada, one of which, to wit, Senate Bill No. 320,

at my request the late Senator Hon. John F. Miller introduced in the Senate on fifth of December, 1883, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 1, and the other, to wit, H. R. No. 109, was also at my request introduced in the House on tenth December, 1883, by Hon. Barclay Henley, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 2.

These two bills, it will be perceived, covered interest for two classes of claims:

First—"Interest upon loans or money borrowed and actually expended by them for the use and benefit of the United States *during the late war for suppressing insurrection and rebellion.*

Second—Interest upon loans or money borrowed and actually expended by them for the use and benefit of the United States *on account of Indian hostilities in said States and Territories.*

After these two bills had been introduced in the Forty-eighth Congress, I soon discovered that while there were a number of Eastern members in that Congress who seemed willing to reimburse California, Oregon, and Nevada for interest they had paid out on account of the war of the "*rebellion,*" yet these same men were not equally willing to reimburse these same States for interest where the same had been by them paid out on account of "*Indian hostilities.*" In view thereof, and having maturely considered this subject from many points of view, and desiring as I did to secure favorable action upon *both* of these propositions, and to avoid having these bills, as presented, being amended by leaving intact one and striking out the other of said two provisions, and thereby jeopardize in the future the success of the one so stricken out, I deemed it best to proceed in two separate bills, the one to be limited to interest paid out on account of the rebellion war claims, and the other on account of Indian war hostilities, and in order that this measure for the payment of interest should have a general support, I deemed it wise to make both of said bills *general by applying to all States and Territories alike.*

I therefore prepared for this purpose two separate and independent bills, one of which at my request, to wit, H. R. No. 2930, was on January 8, 1884, introduced in the House, *limited to Indian hostilities,* and a similar bill, to wit, H. R. No. 2463, on the same day, *limited to the war of the rebellion,* was at my suggestion introduced, and both referred to the House Committee on War Claims, copies of which are hereto attached and made a part hereof, and marked Exhibits Nos. 3 and 4.

In support of these several bills I prepared, and had printed at my own expense, appropriate arguments, and submitted the same to said Committee on War Claims, copies of which are hereto attached and made a part hereof, and marked Exhibits No. 5 and No. 5½.

At the same time I prepared, and had printed and submitted to each of the members of the delegations from California, Oregon, and Nevada, and of said committee, a circular letter, a copy of which is hereto attached and made a part hereof, and marked Exhibit No. 6.

This War Claims Committee, having maturely considered the subject-matter, did, on April 1, 1884, make a favorable report thereon, to wit, Report No. 1102, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 7.

For reasons before stated, I thought it equally wise to proceed in the Senate by separate bills, but deemed it prudent not to have any action taken in the Senate *until after the House had acted thereon.* As soon as the House War Claims Committee made its said report on April 1, 1884, partly at my suggestion, a bill, to wit, Senate Bill No. 2000 (similar in all respects

to H. R. No. 2364) was introduced in the Senate on April 5, 1884, and referred to the Senate Committee on Claims, and which committee, on May 28, 1884, favorably reported said Senate Bill No. 2000 in its Senate Report No. 590, copies of which bill and report are hereto appended and made a part hereof, and marked Exhibit No. 8.

In view of what had then already taken place on said Senate Bill No. 2000, and said House Bill No. 2364, I deemed it proper and my duty to bring the same to the attention of the Legislature of California at its next session, to wit, in January, 1885, and for this purpose I submitted a report thereon to your office.

Thereafter the Legislature, having had the matter under its consideration, did, on fifth of March, 1885, pass Senate Concurrent Resolution No. 25, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 8½.

Copies of this resolution having been forwarded to me by the honorable Secretary of State, under the seal of his office, from Sacramento, were by me filed with the appropriate committees in both Senate and House, and given to the members of our California delegation in Congress.

The subject-matter of this interest claim of the State of California, I had prior thereto made known to your office, by appropriate reports, whereupon you thereafter conferred upon me your authority to represent it among other claims; copy of your said authority has been heretofore appended, as my Exhibit No. 7, in my report on "*California Indian War Claims*," and to which reference is now made, and all of which appointments so made, the Legislature of California, on third March, 1885, duly validated, ratified, and confirmed, in Senate Concurrent Resolution No. 3, copy of which has been heretofore appended as my Exhibit No. 8, in my report on "*California Indian War Claims*," and to which reference is now made.

Though every proper effort was made by me and by other friends of this measure to secure consideration of these bills and reports during the Forty-eighth Congress, that Congress adjourned without even considering the same; but both bills stood on the calendars of both the Senate and House on the day of the *sine die* adjournment of the Forty-eighth Congress with favorable reports.

When the Forty-ninth Congress convened I renewed my efforts in behalf of this same measure and in the manner following, to wit: I prepared three bills, and at my request the same were introduced, as follows, to wit, H. R. No. 163, by Hon. Barclay Henley, December 21, 1885, a *general* bill for interest on account of "*Indian hostilities*," and H. R. No. 152, by Hon. Barclay Henley, December 21, 1885, and Senate Bill No. 59, by General Cullom, December 8, 1885, *general* bills for interest on account of the "*War of the Rebellion*." Copies of which are hereto attached and made a part hereof, and marked Exhibit No. 9.

Said Senate Bill No. 59 was favorably reported upon on sixteenth December, 1885, by Senator Hoar, in Senate Report No. 2, copy of which is hereto attached and made part thereof, and marked Exhibit No. 10. And the Senate favorably recognized the principles contained in said bills by reiterating the same thereafter during the first session of the Forty-ninth Congress in its Senate Report No. 183, made by Senator Hampton on March 3, 1886, in the "*Florida case*." Copy of which is hereto attached and made a part hereof, and marked Exhibit No. 11.

The position of the House of Representatives during the first session of the Forty-ninth Congress on this subject-matter of interest, was rather *anomalous*, and because while the House Committee on War Claims

reported said House Bill No. 152 *unfavorably*, and as will appear from copy of their said report thereon, to wit, House Report No. 560, made April 6, 1886, by Mr. Perry of South Carolina, copy of which is hereto attached and made a part hereof, and marked Exhibit No. 12. The House Committee on Claims, in this same Congress, on *four* different occasions *recognized the obligation of Congress to pay interest on similar claims, and they so recommended in four different reports from said committee*, as follows, to wit:

First—In its House Report No. 303, made February 3, 1886, by Mr. Dougherty, in the Florida case.

Second—In its House Report No. 518, made February 13, 1886, by Mr. Shaw, in the case of the States of Maryland and Virginia.

Third—In its House Report No. 519, made February 13, 1886, by Mr. Trigg, in the case of the City of Baltimore, and the States of Massachusetts, New York, Pennsylvania, Delaware, Maryland, Virginia, and South Carolina.

Fourth—In its House Report No. 3126, made June 30, 1886, by Mr. Gallinger, in the case of the First National Bank of Newton, Massachusetts.

Copies of which are hereto attached and made a part hereof, and marked Exhibit No. 13.

It will be observed that this House Report No. 1560 nowhere meets the question of equity presented in said *Interest* Bill H. R. No. 152, as introduced by Hon. Barclay Henley. All there is of the report is: "That the rule of adjustment of the Treasury Department officials in regard to interest was correct." No one disputed that proposition *then*, and no one disputes it *now*. The accounting officers of the Treasury have to adjust all accounts according to the laws as they actually exist, and Congress not having enacted any law allowing interest to States for expenses of wars, such as California has heretofore incurred, the Treasury officials of course could not state an account for interest.

But the object of said H. R. No. 152 was not to declare that the accounting officers of the Treasury were right or wrong, and that was not the question before the War Claims Committee; but *the* question that was actually before them was, as to whether it was not equitable to refund or make to all the States payment for interest where the States had to pay interest, and this Report No. 1560 dodges that question, and which was the only one before the War Claims Committee. A perusal of this report shows that the matters therein contained did not express the unanimous sentiment of even that committee, which is full of facts, authorities, and precedents, and wherein the prior action of that same War Claims Committee of the Forty-eighth Congress was not only referred to, but Mr. Rowell's report, No. 1102, made on H. R. No. 2463, in the Forty-eighth Congress, was bodily incorporated in said minority report.

Not only this, but even the action of the House Claims Committee of the first session of the Forty-ninth Congress, as by me hereinbefore referred to, was also favorably cited in said minority report.

When the Senate reached the aforesaid Senate Bill No. 59, it was considering its calendar under its five-minute rule, and as a bill of this magnitude could not be considered under any rule that limited debate to five minutes, this Senate Bill No. 59, under objection under said rule, "went over," and was never thereafter considered by the Senate; but when the Senate adjourned *sine die* this bill stood at the head of the Senate calendar.

For reasons hereinbefore stated on other of these claims, the House adjourned its first session without considering either this measure as an

independent proposition, or even any of the other bills in which said House Reports Nos. 303, 518, 519, and 3126 had been made, and in which this measure of interest had been favorably recommended.

In conclusion, I beg to report to you that I feel quite confident that in due time *interest on all California's war claims* will receive full attention at the hands of the proper United States authorities, and wherefore I shall hereafter renew my efforts in behalf of this measure, knowing, as I do, that the main work in these premises has already been done by me; and which work in due time must, in my opinion, eventuate in giving the State of California all proper benefits of this equitable claim, the proceeds arising from which can be expended for such purposes as the Legislature of California may hereafter wisely determine.

All of which is now very respectfully submitted.

JOHN MULLAN,
Agent and Counsel for the State of California.

No. 7. REFUNDING CALIFORNIA SUCH MONEYS AS SHE HAS HERETOFORE PAID AS FEES ON SELECTIONS OF AGRICULTURAL LANDS THAT HAVE BEEN CANCELED BY THE UNITED STATES;

AND

PAYING CALIFORNIA MONEYS THE UNITED STATES HAD RECEIVED FROM SALES, OR BY VIRTUE OF AN ESTIMATED VALUE OF LANDS WHICH HAVE BEEN OTHERWISE DISPOSED OF, BUT WHICH LANDS WERE GRANTED OR CONFIRMED TO HER AS SWAMP AND OVERFLOWED LANDS BY CONGRESS.

My practice in land cases arising before the Interior Department at Washington, D. C., brought to my knowledge some time ago that the State of California having, or should have, paid fees at the rate of \$2 for selections of one hundred and sixty acres each, of lands in part satisfaction of sundry grants of agricultural lands heretofore made to her by Congress; and which selections having been not only not confirmed, but which for cause pronounced by the United States to be *valid*, in sundry cases had been canceled by the General Land Office: and it occurred to me that if a proper examination of the whole thereof should be made, it would clearly appear to what extent the United States had received money paid as fees by the State of California for such selections as had been so canceled. It also came to my knowledge that the United States had in some cases sold, and in other cases had *otherwise disposed* of sundry tracts of land, which in my opinion clearly were not the property of the United States to either sell or otherwise dispose of, and because I thought the same inured to the State of California under her swamp land grant of September 28, 1850 (U. S. Statutes, vol. IX, page 519), or under her confirmatory grant of July 23, 1866 (U. S. Statutes, vol. XIV, page 218).

Thereupon I brought these matters to the attention of the State Surveyor-General, Hon. H. I. Willey, who conferred upon me his authority to represent the same in behalf of the State of California. Copies of my authority in these premises are hereto attached and made a part hereof, and marked as Exhibit No. 1.

This matter of fees having been brought to the attention of the Legislature of California, that body, after maturely considering the same, on

March 3, 1885, duly acted thereon, as appears from copy thereof, filed as my Exhibit No. 8, in my report on "*Indian War Claims*," and to which reference is now made.

Armed, therefore, with this authority to represent the interests of the State of California in these premises, I thereupon proceeded to make a detailed examination of all the entries of these selections of lands heretofore made by the State of California, and which had been canceled as aforesaid, in order to *segregate such of these selections which had been canceled* from those which had not been canceled (numbering in all as they do, a total aggregate of several thousand throughout the whole State—now subdivided into ten (10) United States Land Districts). It has been, and will in the future continue to be, necessary for me to carefully examine the one hundred and twenty-five volumes of tract books in which these entries have been posted and now recorded; and has been and will become also necessary for me to carefully examine into over two thousand monthly and quarterly reports of the several Registers, and particularly of the money returns of the Receivers of Public Money in California, in order to ascertain just what fees these officers have reported as having been by them received from the State of California on account of said selections of lands.

Under a rule laid down by the General Land Office in these cases, it has been made requisite that I should make up the claims of the State of California against the United States, *in each particular instance of cancellation*, by giving:

First—The number of the State selection that has been canceled.

Second—The character of the land grant under which said selection was made.

Third—The description of the land so selected.

Fourth—The land district in which was situate the lands so selected.

Fifth—The date when such selections were made.

Sixth—The date when the fees on such selections were paid.

Seventh—The amount of the fees so paid on such selection.

Eighth—The name of the officer receiving said fees for said selection.

Ninth—The date when such selections were canceled.

And all of which, where not heretofore done, will have to be done by me before the United States will undertake any examination in order to verify the accuracy of the claim so made, or before it will state an account for any sums that such an examination may disclose to be due the State of California by the United States on account thereof.

The foregoing requirements involve much time, care, and careful analytical examination of numerous records and papers, and is a class of work which cannot be made continuous, because many of these records are in daily use, and as it involves many months of labor, it is impossible for any one to confine himself exclusively to same.

In view thereof, my labors in this class of cases are not yet completed, so that I am unable as yet to report to you what sums are liable to be derived from this particular source. It is proper, however, that I should report to you that, whereas the United States now believe that the State of California is now indebted to them, in a sum now unascertained on account of sundry *valid* selections of lands upon which the fees as required by law have not heretofore been paid by the State of California, that I am liable to be confronted with a proposition on the part of the United States, that instead of paying over to the State of California in *cash* any particular sum which the results of my examinations may disclose to be due the State of California by the United States herein, that the United States may deem

it its duty to set-off such sum as a *credit* to such other sums as the United States may find to be due by the State of California on account of *fees* not heretofore by her paid, but which are still due the United States on account of other valid selections of lands which have been heretofore made by the State of California and allowed, or to be allowed, and confirmed, or to be confirmed, to her by the United States.

In regard to the second branch of this case, to wit, paying California those moneys which the United States have either received from *cash sales*, or due from an estimated value of those *otherwise disposed of*, and which lands were not the property of the United States to dispose of *at the date of such disposal*, but which lands were *then* the property of the State of California, and because the same were either originally granted by Congress to California in her Swamp Land Act of September 28, 1850, or which were confirmed to her on July 23, 1866, in the "Act to quiet land titles in California," and a claim to which the State of California has not heretofore asserted, or which claim thereto, if asserted, has been heretofore unsuccessfully maintained, or been declared against her.

I beg to report to you that I prepared a *general bill* to reach the remedy sought for this purpose, which at my request was, on January 11, 1886, introduced by the Hon. Barclay Henley, and referred to the House Committee on Public Lands, to wit, H. R. No. 3222, copy of which is hereto attached and made a part thereof, and marked Exhibit No. 2, and which I supported with an appropriate argument before said House Public Lands Committee. This, and other bills having a somewhat similar object in view for other States, having been duly considered by that committee on March 17, 1886, it made a favorable report on the *general subject-matter* in House Report No. 1089, copy of which is hereto attached, and which, with said amended bill as reported, are now made a part hereof, and marked Exhibits No. 3 and No. 4.

This bill proposes to pay a *cash indemnity* to (among other States) the State of California, in all cases, for all swamp lands which, though granted and confirmed to her, have not heretofore inured to her benefit, and of which she has heretofore been deprived, and because *either of the sales, or of the location, or of the entry, or of the selection, or of the disposal of the same to or by some person or persons other than to or by the State of California*, the legal equitable grantee thereof.

The adjustment provided by said bill seems to me to be in all respects equitable, and, in my opinion, will in due time receive the favorable attention of Congress.

But the first session of the Forty-ninth Congress, seeming to have had its time so thoroughly engaged in *other matters*, this measure, though early and favorably reported upon to the House of Representatives, failed to receive either attention or recognition of that body, and because the calendar of which it constituted a part was never called during the first session of the Forty-ninth Congress, that adjourned August 6, 1886.

I shall hereafter renew my efforts in behalf of both of these two propositions, and in which much work has already been done by me, but in which in the future much more work will yet have to be done than has been done in the past, but which, when completed, will eventuate in giving the State of California all proper benefits arising therein, when the proceeds arising from these equitable claims can be expended for such purposes as the Legislature of California may hereafter wisely determine.

All of which is now very respectfully submitted.

JOHN MULLAN,
Agent and Counsel for the State of California.

No. 8. CONCLUSION.

In conclusion, Governor, I have thus endeavored, in the foregoing synopsis, to give you an accurate and as complete a history of the action that has heretofore been had in regard to the several claims of the State of California against the United States that have been intrusted to my agency, and such as I thought was necessary to enable you and the people of California to have a full understanding of the character and extent of each, and what proceedings have already been had in the past, or that may be necessary to be had in the future, in order to secure the proper adjudication and full payment of each thereof.

It has been no less to my personal interest than it has been to that of the public interest of the people of the State of California to secure the *very earliest adjustment possible* for all of these several claims at the hands of the Federal authorities; and because, under my contract with the State, my compensation consisted of a contingent fee only, and payable only in the event of success, the State of California not incurring any expenses of any kind in regard to any of the matters in anywise connected with the presentation or the adjustment of any thereof.

Any delay, therefore, had in any of these premises, has not been of my creation, or due to any laches on my part; but such as they are, they seem to be inseparable from and generally attend all adjustments had by either individuals or States with the Federal Government where the *payment of money* is involved, or where the securing of adequate legislative machinery to pay the same has been found necessary.

I know that the belief is generally entertained and has been sometimes expressed, that all that is necessary to be done by the members of a State delegation in Congress is for them to ask the Executive Departments to state accounts, or to present proper bills of relief in Congress for their respective States, and that such departments or Congress *at once respond by granting the relief or the remedy sought*. My experience, however, and that of those who have had most to do with this class of cases, does not confirm any such belief. On the contrary, all the executive departments, and all the committees in Congress, demand that all claimants, be they individuals or be they States (and they are all treated equally alike in all matters of claims against the United States), should properly and fully prepare their respective claims against the United States, and support the same with all proper evidence, for neither the one nor the other will go out of their way to adduce evidence to favorably support the same, *though both often supplement such presentation with evidence intended to defeat such claims*.

It is therefore not to be expected that the members in Congress, either from California or from any other State, will convert themselves, either singly or generally, into special agents of their respective States to properly prepare, or to present, or to plead, or to argue the claims of their respective States against the United States, except it be in public debate upon the floor of the respective Houses, while such subject-matters are legitimately before the same for passage, or being considered in the Committee of the Whole House, or before such special committees to which the same may have been reported for full examination and proper report to the whole House.

As members of Congress they are the servants of the United States, and are not and cannot be made special agents for any State in any matter that must come before them to pass upon as legislators, and besides *none have the time and few even the disposition to so act*.

Besides, the delegation in Congress from California has been constantly changing, so much so that to-day there is *not a single member* in our California delegation, in either the Senate or in the House, who was in Congress at the time I took hold of these several claims. Some have retired from public life, while two of the Senators who took a most active interest in behalf of these several claims, to wit: Senators Miller and Farley, have died during this time.

It has been therefore absolutely necessary for some one, having both the knowledge of all the facts, and whose interest it has been made by the State to keep constantly before our delegation in Congress from California all the matters relating to the past history or status at any time of these several claims, and to present from time to time to them such suggestions as might seem to be needed to secure a proper understanding of all that might be necessary to favorably reach the end sought to be secured in all thereof.

This duty I have ever sought at all times to perform to the best of my ability, and whatsoever lack of evidence of this allegation on my part the foregoing reports and exhibits may disclose, will, I am confident, be fully supplied, if necessary, by every member of the California delegation now in Congress, or by any of its living ex-members, who have been by me kept fully advised of all that has been done in these several claims.

The exhibits appended to the foregoing reports will, I believe, fully supply any information not to be found in the body of any one thereof.

When the several claims that have been intrusted to my care shall have been finally adjusted, I shall then submit to your office full and final reports on each thereof, and, in the meantime, I would state that all the more valuable papers relating to these claims, when not in use by me in my office, and which have not as yet been filed by me with the proper departments, are safely and securely stored, at my own expense, in one of the best fire-proof safe deposits in this city, in order that no loss of any kind should occur thereto to the detriment of the trust that has been heretofore confided to my care by the people of the State of California in and under the several contracts as hereinbefore recited.

I am, Governor, very respectfully, your obedient servant,

JOHN MULLAN,
Agent and Counsel for the State of California.

EXHIBIT NO. 14.

[Copy of Telegram.]

SACRAMENTO, CAL., Feb. 3, 1888.

Capt. JOHN MULLAN, Washington, D. C.:

Several communications have been received, signed by yourself as State Agent for California, in which you refer to the passage of a claim of the State of California of five per cent of the cash sales of the public lands, etc.

I wish you distinctly to understand that I do not recognize your authority to act in behalf of California in the premises, you never having been appointed by any competent authority for that purpose; all the necessary care and attention having been paid to the matter by the Senators and Representatives from California.

As you are acting entirely in a private capacity, without any sanction from myself, I prefer receiving all further communications in regard to the matter from the duly accredited Representatives from California in the Senate and in the House.

R. W. WATERMAN, Governor.

EXHIBIT NO. 15.

[Copy of Telegram.]

SACRAMENTO, CAL., February 6, 1888.

Capt. JOHN MULLAN, Washington, D. C.:

My telegram to you of Friday last covers the matter of the refunded tax commission, and everything else in connection with which you claim to represent the State.

R. W. WATERMAN, Governor.

EXHIBIT NO. 16.

[Copy of Letter.]

EXECUTIVE OFFICE, SACRAMENTO, CALIFORNIA,)
February 10, 1888.)*Capt. JOHN MULLAN, Washington, D. C.:*

Referring to my telegrams of the third and sixth, respectively, and after due and careful consideration of the matters therein referred to, I am convinced that certain appointments (as Agent and Attorney to represent the State in Washington) made to you by the Governor and State Surveyor-General, and which you endeavored to have ratified and confirmed, with a commission of twenty per cent fixed as your fee, by concurrent resolution of March 3, 1883, and March 3, 1885, should be, and are hereby, most emphatically revoked.

This revocation applies specially to the appointment by Surveyor-General Minis, November 1, 1878, in the matter of the "Five Per Cent Claim," aggregating nearly one million dollars.

To the appointment of ex-Governor George C. Perkins, December 12, 1882, in the matter of "Direct Tax of August 5, 1861," aggregating over two hundred thousand dollars; also that of March 7, 1882, in the matter of the "Modoc War Claims;" also that of July 12, 1882, being "Claim for money expended and indebtedness assumed in repelling invasions, suppressing insurrections and Indian hostilities," together with interest on the same; also claims under the provision of the Act of Congress, June 27, 1882, known as the "Rebellion Claims," aggregating a grand total of \$2,938,623.

To the appointment of ex-Governor George Stoneman, March 31, 1884, in the matter of "Claims of State of California growing out of Indian hostilities, and in the matter of all moneys that have been paid, or may be due by the State of California on account of Indian war claims, or Indian war bonds, or coupons issued by the State for the suppression of Indian hostilities, and for the purpose of recovering from the United States the payment of the whole of these, together with interest due on same," aggregating a total of several hundred thousand dollars.

To the appointments of Surveyor-General Willey, October 24, 1883, and December 1, 1885, in the matter of "refunding certain fees," and "indemnity for certain swamp lands," therein mentioned.

The appointments above enumerated, when taken in connection with the appointments named and attempted to be confirmed in the concurrent resolutions of March 3, 1883, and March 3, 1885, are vague, indefinite, and uncertain; and that there may be no mistake, I hereby revoke all appointments held by you from the Governor or State Surveyor-General of whatever kind or nature, or named in said concurrent resolutions.

R. W. WATERMAN, Governor.

EXHIBIT No. 17.

[Copy of Telegram.]

EXECUTIVE OFFICE,
SACRAMENTO (Cal.), February 10, 1888. }*To the Honorable Secretary of the Treasury, Washington, D. C.:*

You are hereby notified and attention called to the fact that Captain John Mullan has no authority from me as agent or attorney in representing the State of California before your Department.

Therefore, he cannot receipt for or receive any drafts, warrants, or moneys belonging to the State of California, and you are instructed to hold such drafts, warrants, or money subject to my order.

R. W. WATERMAN, Governor.

EXHIBIT NO. 18.

[Copy of Telegram.]

EXECUTIVE DEPARTMENT, STATE OF CALIFORNIA, }
SACRAMENTO, February 25, 1888. }*To the Honorable Secretary of the Interior and Commissioner of the General Land Office, Washington, D. C.:*

You are hereby notified and your attention called to the fact that Captain John Mullan has no authority, as agent or attorney, in presuming to represent the State of California before the Land Department. All appointments, of whatever kind or nature, held by him from the Governor or State Surveyor-General to represent this State before the Land Department of the Government were revoked by me on the third and tenth respectively.

R. W. WATERMAN, Governor.

EXHIBIT No. 19.

[Copy of Letter.]

EXECUTIVE DEPARTMENT, STATE OF CALIFORNIA, }
SACRAMENTO, March 6, 1888. }*Hon. C. S. FAIRCHILD,, Secretary of the Treasury, Washington, D. C.:*

SIR: To arrive at a correct understanding as to the right of Captain John Mullan to represent this State as agent or attorney in Washington, the following recital of facts is necessary:

On February tenth I addressed you the following telegram:

" EXECUTIVE OFFICE, }
" SACRAMENTO, February 10, 1888. }*" To the Hon. Secretary of the Treasury, Washington, D. C.:*

" You are hereby notified and attention called to the fact that Captain John Mullan has no authority from me as agent or attorney in representing the State of California before your department.

" Therefore, he cannot receipt for or receive any drafts, warrants, or moneys belonging to the State of California, and you are instructed to hold such warrants, drafts, or moneys subject to my order.

" R. W. WATERMAN, Governor."

On February thirteenth, Acting Secretary of the Treasury Hugh S. Thompson acknowledged receipt as follows:

“TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,)
WASHINGTON, D. C., February 13, 1888.)

“Hon. R. W. WATERMAN, *Governor of California, Sacramento, Cal.*:

“SIR: I have to acknowledge the receipt of your telegram of the tenth instant, stating that John Mullan has no authority to represent the State of California before this department, and to inform you that it has been referred to the Hon. First and Second Comptrollers for their information.

“Respectfully yours,

“HUGH S. THOMPSON, Acting Secretary.”

On February twenty-first John S. Williams, Third Auditor, addressed me the following letter:

“TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,)
WASHINGTON, D. C., February 21, 1888.)

“Hon. R. W. WATERMAN, *Governor of California, Sacramento, Cal.*:

“SIR: The Secretary of the Treasury has referred to this office copy of your telegram to him of the tenth instant, in which you state that Captain John Mullan is no longer recognized by you as agent or attorney for the State of California before the Treasury Department.

“I now have the honor to inclose herewith copy of Captain John Mullan's authority to act as agent, etc., and also copy of Senate Concurrent Resolution No. 3 of March 3, 1885, showing subsequent ratification by the Legislature of his appointment and commission, for your consideration and remark.

“Very respectfully,

“JOHN S. WILLIAMS, Auditor.”

It is a singular fact that while Captain John Mullan is submitting copies of appointments and concurrent resolutions for inspection by the Third Auditor, he should fail to submit for his consideration his pretended appointment by the Governor, “in the matter of the claim of this State to the five per cent net proceeds of the sales of public lands by the United States in this State,” together with the concurrent resolution adopted March 3, 1883, which recites this appointment and attempts to confirm the same.

The all-important proposition, and the one in which the people of California are at this time particularly interested, is the five per cent claim, of which, in the documents you inclose for my “consideration and remark” no mention is made.

Neither is any mention made of the direct tax claim, in which the State of California is interested to the extent of \$216,000.

Under this five per cent claim alone, which must be finally adjudicated by your department, there will accrue to the State of California, on the passage of Senate Bill 418, in the Fiftieth Congress, nearly \$1,000,000 for the benefit of our common or public schools.

As Mullan claims twenty per cent, or one fifth of these amounts to be appropriated by Congress for “services rendered,” you will see that we cannot intelligently discuss the law or the facts as to Mullan's authority

or claim to the custody and control of the warrants, drafts, and money to be issued and paid by the Treasury Department until all of Captain John Mullan's appointments and concurrent resolutions are before you.

For your information I will here remark that after duly considering the validity of all the appointments and concurrent resolutions made and adopted in the interest of Captain John Mullan, and being fully advised as to my powers and duties in the premises, I did, on February third, address him a telegram, in which I said: "I wish you to distinctly understand that I do not recognize your authority to act in behalf of California, you never having been appointed by any competent authority for that purpose, and that you are acting entirely in a private capacity."

And on February tenth I revoked all his appointments, as is shown by the following communication:

"EXECUTIVE OFFICE,
"SACRAMENTO, February 10, 1888. }

"*Captain JOHN MULLAN, Washington:*

"Referring to my telegrams of the third and sixth, respectively, and after due and careful consideration of the matters therein referred to, I am convinced that certain appointments (as agent and attorney to represent the State in Washington) made to you by the Governor and State Surveyor-General, and which you endeavored to have ratified and confirmed, with a commission of twenty per cent fixed as your fee, by concurrent resolution of March 3, 1883, and March 3, 1885, should be and are hereby most emphatically revoked.

"This revocation applies especially to the appointment by Surveyor-General Minnis, November 1, 1878, in the matter of the '5 per cent claims,' aggregating nearly \$1,000,000.

"To the appointment of ex-Governor George C. Perkins, December 12, 1882, in the matter of 'Direct Tax of August 5, 1861,' aggregating over two hundred thousand dollars; also, that of March 7, 1882, in the matter of the 'Modoc War claims;' also, that of July 12, 1882, being 'Claim for money expended and indebtedness assumed in repelling invasions and Indian hostilities,' together with interest on the same; also, claims under the provision of the Act of Congress, June 27, 1882, known as the 'Rebellion Claims,' aggregating a grand total of \$2,938,623.

"To the appointment of ex-Governor George Stoneman, March 31, 1884, in the matter of 'Claims of the State of California growing out of Indian hostilities, and in the matter of all moneys that have been paid in or may be due by the State of California on account of Indian war claims, or Indian war bonds, or coupons issued by the State for the purpose of recovering from the United States the payment of the whole of these, together with the interest due on same, aggregating several hundred thousand dollars.

"To the appointment of Surveyor-General Willey, October 24, 1883, and December 1, 1885, in the matter of 'Refunding certain fees,' and 'Indemnity for certain swamp lands' therein mentioned.

"The appointments above enumerated, when taken in connection with the appointments named and attempts to be confirmed in the concurrent resolutions of March 3, 1883, and March 3, 1885, are vague, indefinite, and uncertain, and that there may be no mistake, I hereby revoke all appointments held by you from the Governor or State Surveyor-General, of whatever kind or nature, or named in said concurrent resolution.

"R. W. WATERMAN, Governor."

As to the question of the custody and control of any warrants, drafts, or money, representing, as they must, large sums due and payable to the State of California by the United States, there can be no doubt that such power is vested in the Chief Executive of the State, and not in a pretended agent or attorney, who is acting without competent authority and in direct violation of law—never having been legally appointed or confirmed—who has filed no official bond, and has never qualified as such officer or appointee as provided by the law of this State.

It would appear to me, if Captain John Mullan's interests as pretended agent or attorney for this State in Washington have in any way been jeopardized by my action, his remedy must be against the State in her own tribunals, and not before an Executive Department of the United States Government.

I have again to request that you direct all warrants, drafts, or moneys issued from the Treasury and drawn on the sub-Treasury at San Francisco, in pursuance of any appropriation made by Congress for the benefit of California, payable to the Governor, to be retained by the proper officer, subject to my order.

Should you desire further information I would be pleased to furnish the same.

Respectfully yours,

R. W. WATERMAN, Governor.

[San Francisco Chronicle, March 13, 1888.]

EXHIBIT No. 20.

The Governor of California:

SIR: In compliance with the request of the Governor of California, that I furnish him with a copy of the paper presented to him by me on January 18, 1889, I have the honor to now very respectfully present the Governor of California herewith a duplicate original of said paper.

I am, Governor, yours very respectfully,

JOHN MULLAN.

At the Capital, Sacramento, Cal., January 21, 1889.

The Governor of California:

SIR: *First*—On March 13, 1862, the Legislature of the State of California appropriated the sum of \$16,382 60, which was thereafter duly disbursed by the proper State officers of the State of California for the "common defense," to wit: In the payment of expenses incurred in the suppression of Indian hostilities in the County of Humboldt in this State in 1861. (See page 54 Statutes of California, 1862.)

Second—This expenditure by the State of California so appropriated and so expended for the "common defense," was under the Constitution of the United States in all respects proper to be refunded by the United States to the State of California. Copy of this Act of the Legislature of California of March 13, 1862, is now hereto attached, made a part hereof, and marked Exhibit No. 1.

Third—The history of the circumstances and public exigencies under which the expenditure was made necessary by this State, and the method suggested by Governor Downey how this expenditure *might have been duly credited to the State* (but which was not done), were all duly laid before the Legislature of California by the Governor, Hon. John G. Downey, in

his regular message to the Legislature in January, 1862; extract from which message relating to this matter is hereto attached, made a part hereof, and marked Exhibit No. 2.

Fourth—The efforts taken by ex-Governor Downey to aid in securing the evidence made necessary by the United States to prove and establish the validity of this refunding by the United States to the State of California are set forth in an affidavit made by said ex-Governor Downey, on June 15, 1888, at Los Angeles, California. Copy of which affidavit is hereto attached, made a part thereof, and marked Exhibit No. 3.

Fifth—More than twenty years having elapsed—during which interval the amount of the interest lost to this State by virtue of its failure to secure the refunding of the aforesaid sum from the United States has far exceeded the amount of the principal, and no portion of said principal having been refunded by the United States to the State of California prior to July 12, 1882, the Governor of California, Hon. George C. Perkins, on July 12, 1882, employed me to secure the refunding to the State of California by the United States of the aforesaid sum, and other sums or claims, proceeding therein under an Act of Congress, approved June 27, 1882. (Page 111, United States Statutes, 1882.)

The compensation for my services in these cases was to be paid *exclusively* out of the sums or claims I might receive from the United States for this State, at my own expense, and not at any time at the expense of this State, contingent, however, upon my success.

It was also expressly understood that any compensation in these cases was to be left entirely to the judgment and discretion of the Legislature of California to fix and determine.

Copy of this employment is hereto attached, made a part hereof, and marked Exhibit No. 4.

Sixth—At its next session subsequent to July 12, 1882, upon the recommendation of Hon. George C. Perkins, as Governor of California, duly recited in his regular message to the Legislature in January, 1883, the Legislature of California, on March 3, 1883, duly approved said employment by ratifying and confirming the same in a *contract* by which the rate of the compensation for my services rendered and to be rendered and the amount thereof were all duly provided for, to wit: the same was to be a commission on the amounts of the sums or claims so by me collected, the amount and rate of my said commissions to be fixed and determined in the manner and to be paid as in said *contract* duly recited, and payable to me only in the contingency of my success.

Copy of this recital of recommendation from Governor Perkins' said message to the Legislature of California, in January, 1883, is hereto attached, made a part hereof, and marked Exhibit No. 5. And copy of said *contract* is hereto attached, made a part hereof, and marked Exhibit No. 6. (Page 394, Statutes of California, 1883.)

Seventh—Proceeding in good faith immediately after the date of my said employment and so continuing thence to this date, and ever with due diligence under said *contract*, and at all times and places at my own expense, and never at any time or place at any expense to the State of California, never having paid and never liable to pay any expenses of either fees or of salaries of any nature or kind or description to any one whomsoever other than my said contingent commission, I have succeeded at the earliest date practicable in having the United States take the proper and final steps necessary to have duly refunded or reimbursed to the State of California the sum of \$11,723 64 in partial payment of the aforesaid disbursement of \$16,382 60 by the State of California for the common defense.

(See page five hundred and seventy-five, U. S. Statutes, 1888. Act of Congress, approved October 19, 1888, the words as follows, to wit: "Reimbursement to certain States and Territories of expenses incurred in repelling the various, and suppressing Indian hostilities, Act June 27, 1882, \$11,723 64.")

Eighth—The refunding of this sum of \$11,723 64 has been duly authorized to be made by the United States in the manner following, to wit: By two drafts duly drawn by the Treasurer of the United States and duly delivered to me by direction of the proper officers of the United States Treasury Department, Washington, D. C., and by me duly receipted for, to wit: One draft, No. 26,538, being for \$9,378 92; one draft, No. 26,539, being for \$2,344 72 (the latter draft representing the amount of my commission and my compensation in this case); both drafts drawn "to the order of the Governor of California;" both drafts made payable by the United States Assistant Treasurer at San Francisco, California, and both drafts bearing date, "Washington, D. C., January 2, 1889."

Ninth—These two drafts, representing as they do the results of part of my services in behalf of the State of California (continuously from July 12, 1882, to January 18, 1889,) and of the amount finally allowed by the United States in this case, I now very respectfully tender to the Governor of California in and as the evidence in part of the due performance in good faith by me of my part of said contract; and at the same time I now ask, and very respectfully request, the Governor of California to fix and determine the amount of my compensation for my services rendered in these premises, and also to now pay me the same, and all to be done in the manner and to the extent as provided for in said *contract* (Exhibit No. 6), and all of which I now pray and move may be so done by the Governor of California in and as evidence of the due performance in part by the State of California of its part of said *contract* in this case.

I am, Governor, yours, very respectfully,

JOHN MULLAN.

At the Capital, Sacramento, California, January 18, 1889.

EXHIBIT No. 1.

CHAPTER LXVI.

[California Statutes, 1862, page 54.]

An Act for the payment of expenses incurred in the suppression of Indian hostilities in the County of Humboldt, in this State.

[Approved March 13, 1862.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The sum of \$16,382 60 is hereby appropriated out of any money in the General Fund not otherwise appropriated, for the payment of the indebtedness incurred by the expedition of the mounted volunteers, called into service by the Governor of this State, against the Indians in Humboldt County, in the year A. D. 1861.

SEC. 2. The Controller shall draw his warrants upon the Treasurer in favor of such persons and for such amounts as have been audited and allowed by the Board of Military Auditors of this State, incurred by the said expedition.

SEC. 3. This Act shall be exempt from the provisions of the Act entitled "An Act to create a Board of Examiners, to define their powers and duties, and to impose certain duties upon the Controller and Treasurer," approved April 21, 1858.

Governor Downey to Legislature, January, 1862:

EXHIBIT No. 2.

INDIAN HOSTILITIES.

The employment of State troops for the suppression of Indian hostilities has, with one exception, been avoided during my administration, the officers in command of the United States forces on this coast having, when the same was practicable, rendered timely assistance when called for by me. In the month of August last I received from the citizens of Humboldt County petitions, accompanied by proper and satisfactory affidavits, setting forth that the lives and property of the citizens were being sacrificed by hostile Indians. I applied repeatedly, in person and by letter, to Brigadier-General E. V. Sumner, then in command of the United States Army on this coast, and requested him to move forward troops into the disturbed districts. After some delay he informed me that he had no men at his disposal for this purpose. This refusal involved the necessity of rendering State aid, and a company of mounted men was called out, and remained in service some ninety days, or until Brigadier-General Wright, who had succeeded to the command on the Pacific Coast, gave me assurance that he would send into these districts a sufficient force to insure the protection of the inhabitants and their property.

The expedition, in accordance with the orders and instructions given, was conducted humanely, and met the object for which it was called into service. A proper and praiseworthy economy has been pursued by the officers having charge of it, and an appropriation to meet the expenses incurred is recommended. Sixteen thousand dollars will cover the whole outlay for subsistence, pay of men, and horses, with transportation.

This amount will, as it were, be only advanced to the General Government, as it will be promptly recognized; and when such claims are so recognized, they by law become proper offsets against our quota of the Federal tax to an equal amount.

(Signed)

JOHN G. DOWNEY.

EXHIBIT No. 3.

STATE OF CALIFORNIA,)
County of Los Angeles.) ss.

John G. Downey, upon being first duly sworn, on oath deposes and says: That he is the identical John G. Downey who was Governor of the State of California on August 20, 1861, and on September 30, 1861; that he has read the papers attached hereto and made part hereof, and marked A and B, respectively, and which papers purport to be copies of the orders, instructions, or directions by him issued as Governor of California on the two above named dates, and that to the best of his recollection and belief

said two papers A and B are full, true, and correct copies of the original by him issued to Brigadier General James T. Ryan on the two aforesaid dates; that he is advised by Captain John Mullan, now agent and counsel for the State of California, that diligent search has been made among the archives of the State of California in order to find either the original or copy of said two orders, and that the originals can not now be found, nor any copy thereof except those marked herein as A and B, respectively; that he makes this affidavit at the request of Captain John Mullan, agent and counsel for the State of California, in order to perfect and complete the proof required by the proper officers of the United States to support and establish the claim of the State of California against the United States to be reimbursed the moneys paid by her an account of the issuance and execution of the two aforesaid orders; that he has no interest in the subject-matter of this claim against the United States.

(Signed)

JOHN G. DOWNEY.

Witness to signature:

1. P. S. O'REILLY.
2. R. A. BROWN.

Sworn and subscribed before me this fifteenth day of June, A. D. 1888.

T. E. ROWAN,
Notary Public.

[Seal.]

(See pages thirty-three and thirty-four, Statement of the Case of the State War Claims of California, Oregon, and Nevada, submitted to the United States Senate August 10, 1888.)

[Inclosure with Exhibit No. 3.]

A.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT, }
SACRAMENTO, August 20, 1861. }

SIR: Information having been received at this office from sources entitled to credit, of repeated outrages having been committed by hostile Indians upon the settlers in the vicinity of Eel River, the same having been communicated to General E. V. Sumner, commanding Pacific Division United States Army, with request that he might furnish the desired relief. It not being convenient for said General commanding to render the aid required, and in order to protect the lives and property of the citizens of Humboldt County, you will at once proceed to enroll and muster into service, for the space of three months, forty mounted volunteers to be used in subduing the Indians committing said depredations.

In organizing this company you will follow as strictly as possible the military law of the State and be careful in protecting the lives and property of the citizens; that no inhumanity be practiced towards the Indians; that only those in actual hostility must be molested, and in no case must the lives of women and children be taken, and a departure from these instructions will subject the parties offending to severe penalties and reprimand.

You will report to this office as soon as the company is organized, sending copy of muster-roll and list of officers, that the latter may be commissioned.

Very respectfully, etc.,

(Signed)

JOHN G. DOWNEY, Governor.

JAMES T. RYAN, Brigadier-General, Sixth Division, C. M.

(Indorsements:) Voucher. S. B. No. 18. Order of Governor J. G. Downey. Calling company of troops into service against the Indians, Humboldt County, August 20, 1861. Filed before Committee on Claims, House of Assembly, sixth of February, 1862. W. B. MAY, Clerk.

[Inclosure with Exhibit No. 3.]

B.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT, }
SACRAMENTO, September 30, 1861. }

GENERAL: Representations having been made to me that the force heretofore called out by me for the suppression of Indian hostilities in the County of Humboldt is inadequate to perform the required service, and that additional depredations have occurred since the force was called out, you are hereby authorized to increase said force to sixty men, and to instruct them to extend their field of operations over the adjoining counties, so as to effectually terminate the depredations in that portion of the State.

Very respectfully, your obedient servant,

(Signed) JOHN G. DOWNEY, Governor.

Brig.-Gen. JAMES G. RYAN, San Francisco.

(Indorsements:) Voucher. S. B. No. 18. Order of Gov. J. G. Downey. Calling for an additional number of troops against the Indians, Humboldt County, September 30, 1861. Filed before the Committee on Claims, House of Assembly, sixth February, 1862. W. B. MAY, Clerk.

(See pages 33-34—Statement of the case of the State War Claims of California, Oregon, and Nevada. Submitted to Senate August 10, 1888.)

EXHIBIT NO. 4.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT, }
SACRAMENTO, CAL., July 12, 1882. }

Captain JOHN MULLAN, Washington, D. C.:

DEAR SIR: In reply to your favor of the twenty-second ultimo, relative to certain claims of this State against the United States for money expended and indebtedness assumed in repelling invasions, suppressing insurrections and Indian hostilities, I hereby authorize you, on behalf of the State of California, to represent the same in endeavoring to recover such amount as may be found due and owing by the United States Government to the State of California, on the express condition stated in your communication of the twenty-second ultimo.

Very respectfully,

(Signed)

GEORGE C. PERKINS,
Governor of California.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT,)
SACRAMENTO, December 12, 1882.)

JOHN MULLAN, *Esq.*, *Washington, D. C.*:

SIR: It having come to my knowledge that measures are being taken by several of the States, through their duly appointed agents, to recover from the National Government certain moneys paid by such States under an Act of Congress, approved August 5, 1861, entitled "An Act to provide increased revenue from imports to pay interest on the public debt, and for other purposes," and as the State of California has paid the sum of two hundred and fifty-four thousand five hundred and thirty-eight (\$254,538) dollars under the provisions of said Act, it being the total amount assessed against the State, I, therefore, following the action of our sister States, do appoint you as the agent of the State of California to act in her behalf in taking such steps as may be necessary to recover from the United States Government the sums of money so paid under said Act. Your compensation for services rendered thereunder to be left to the discretion of the State Legislature.

(Signed)

GEORGE C. PERKINS,
Governor of California.

EXHIBIT No. 5.

RECOVERY OF MONEYS FROM THE UNITED STATES GOVERNMENT.

Information having been received by me that the expenses incurred by this State, and by the citizens of Siskiyou and Modoc Counties, for the suppression of Indian hostilities during the Modoc Indian war of 1872, had never been reimbursed by the General Government, I appointed Captain John Mullan, at Washington City, D. C., to represent said interests, on behalf of this State, before the proper authorities of the United States, for the purpose of securing such reimbursements, and, also, for such as were provided for (for California) under the Act of Congress, approved June 27, 1882, authorizing an examination and adjustment of the claims of the States of Kansas, Nevada, California, Oregon, Colorado, Nebraska, and Texas, for repelling invasion and Indian hostilities therein, between April 15, 1861, and June 22, 1882. Since writing the above, I have just been informed by telegraph that success has attended Captain Mullan's efforts, and that the Modoc war bill, reimbursing the State, has passed both Houses of Congress.

In addition to the foregoing, I also received information that many of the States intended to petition the General Government for the return of moneys paid by some of them in part, and by others in whole, of the sums assessed to the several States under the Act of Congress, approved August 5, 1861, to pay the interest on the public debt, and for other purposes. The amount assessed to this State, under said Act, was \$354,538 66, which sum has been paid; but a few of the States have paid their assessments in full, others but a portion, and some of them not anything. Equity would demand that all or none of them should comply with the law.

Deeming the subject of considerable importance, and that the interests of the State required an agent to act in her behalf, with others employed

in obtaining an equitable adjustment of these claims, I also authorized Captain Mullan to represent the State before the proper authorities at Washington, and would recommend that these appointments be ratified and confirmed by you, and that you provide for his compensation, to be paid out of the sums he may recover for the State, contingent, however, upon his success, it having been expressly understood that such compensation should be left entirely to your judgment and discretion.

(Signed)

GEORGE C. PERKINS, Governor.

(Page 22 Appendix to Journals of Senate and Assembly, Twenty-fifth Session.)

EXHIBIT No. 6.

[California Statutes, 1883, page 394.]

Assembly Concurrent Resolution No. 20, relative to directing the Governor to fix the compensation for services rendered by Captain John Mullan, in collections of claims due the State from the United States.

. [Adopted March 3, 1883.]

WHEREAS, The Governor and State Surveyor-General of this State have heretofore, respectively, appointed Captain John Mullan, of San Francisco, California, agent and attorney to represent the interests of the State of California before the proper authorities of the United States, at Washington, District of Columbia, in the matter of the claim of this State to the five per cent net proceeds of the sales of the public lands by the United States in this State; and also in the matter of the direct tax levied upon this State by the United States, under the Act of Congress of August sixth, eighteen hundred and sixty-one; and also of her claim arising during the Modoc war, in eighteen hundred and seventy-two; and also under the provisions of the Act of Congress of June twenty-seventh, eighteen hundred and eighty-two; therefore, be it

Resolved by the Assembly of California, the Senate concurring, That the appointments so conferred upon Captain John Mullan by the Governor and Surveyor-General, respectively, are hereby ratified and confirmed; and the Governor of this State be and he is hereby authorized and directed to fix the compensation for services by Captain John Mullan heretofore and that may be by him hereafter rendered, at twenty per cent of each of the sums or claims that may be by him collected from the United States, and to pay to him such per cent out of the moneys that may be collected by him and paid to this State on account of each of the foregoing matters, respectively; *provided, however,* that this State shall not in any event become liable for any expenses, fees, and salaries, of any nature whatever, other than such contingent commission.

SEC. 2. That the Controller of the State of California be and he is hereby authorized to deliver to Captain John Mullan, or to his authorized agent, all the original vouchers, certificates, and papers of every kind and nature against the Government of the United States, for or on account of each of the foregoing matters, respectively.

SEC. 3. That said Controller shall prepare and take from Captain John Mullan, or from his authorized agent, a receipt in writing, bound in a book, same as he keeps in his office for all such papers as aforesaid, and which shall show what the papers are in each case, and date thereof, by what Board of Examiners passed, the amount and date of the warrant, and in whose favor drawn.

EXHIBIT No. 21.

EXECUTIVE DEPARTMENT, STATE OF CALIFORNIA, }
SACRAMENTO, January 18, 1889. }

Captain JOHN MULLAN, addressed :

DEAR SIR: With this, under instructions of the Governor, I transmit you a copy of the decision reached by the Executive in your case.

Yours truly,

M. D. BORUCK, Private Secretary.

EXECUTIVE DEPARTMENT, STATE OF CALIFORNIA, }
SACRAMENTO, January 18, 1889. }

To Captain JOHN MULLAN, addressed :

On February third, sixth, and tenth, eighteen hundred and eighty-eight, I revoked all of the appointments held by you from the Governor and State Surveyor-General to act as agent or attorney for the State in Washington, which appointments you attempted to have confirmed, with a commission of twenty per cent fixed as your fee, by concurrent resolutions adopted March 3, 1883, and March 3, 1885, and I notified you of my actions. I did, on February 10, 1888, notify the Hon. Secretary of the Treasury that you "had no authority" from me to represent the State of California before his department, "or to receipt for or receive any drafts, warrants, or moneys belonging to the State of California," and requested him "to hold such drafts, moneys, or warrants subject to my order."

It would appear that the Hon. Secretary of the Treasury and yourself have conspired together, against the promotion of public ends, for the purpose of defeating, if possible, my authority in all these matters, that you might obtain possession of these warrants or drafts made payable to me, and attempt, in the garb of a pretended agent or attorney, to levy tribute on me to the extent of twenty per cent, or one fifth of all the moneys called for, as your compensation, for the reason that he has, in opposition to my written instructions, selected you as the messenger to carry to Sacramento and deliver to me certain drafts issued by the Treasurer of the United States on the Sub-Treasurer in San Francisco, based on appropriations made by Congress for the benefit of this State.

This action on his part is most singular, for with the certain and swift communication with distant parts of the country afforded by the mails and express companies, it was entirely unnecessary to make you the custodian of these warrants or drafts, and can only be explained on the proposition that he would give you the benefit of the word "collected," which word is the basis of all your claims to twenty per cent, or one fifth of all the appropriations made or to be made by Congress in the matter of the five per cent claim, direct tax claim, rebellion claim, and Indian or war bond claims, as set forth in the concurrent resolutions to which I have referred. These drafts are made payable to the Governor (or should be) and represent moneys that rightfully belong to the people without diminution. When the bill appropriating these moneys to the State was signed by the President, and drafts issued by the Treasury Department payable to the Governor (who must pay the same into the State Treasury), then these moneys became a part of the public funds of this State and cannot be diverted or drawn from the treasury, "but in consequence of appropriations made by law and upon warrants duly drawn thereon by the Controller."

The concurrent resolutions to which I have referred are without precedent in attempted State legislation, being in direct violation of section fifteen, article four, of the Constitution, which declares "No law shall be passed except by bill." The fact which I desire to emphasize is, that I do not propose to disregard such plain provisions of the Constitution and be made a convenience to carry into effect these unconscionable contracts based on unauthorized appointments and concurrent resolutions, involving as they do, several hundred thousand dollars. I want it distinctly understood that I do not recognize or receive you as acting in the capacity of agent or attorney for California, either in Washington or Sacramento, but simply as a private citizen or messenger intrusted with these drafts for delivery to the Governor, and as such executive officer I demand that you now surrender to me all warrants or drafts you may have in your possession or control, due and payable to the Governor of the State, that I may convey the money into the Treasury of the State where it properly belongs.

(Signed)

R. W. WATERMAN,
Governor of California.

PART NO. 2.

CONTINUATION OF THE SWORN STATEMENT
OF
JOHN MULLAN
RELATIVE TO THE
UNPAID CLAIMS OF THE STATE OF CALIFORNIA
AGAINST THE
UNITED STATES

Made to the SPECIAL JOINT COMMITTEE appointed under ASSEMBLY CON-
CURRENT RESOLUTION No. 5, adopted January 26, 1889.



SACRAMENTO:
STATE OFFICE : : : J. D. YOUNG, SUPT. STATE PRINTING.
1889.

STATEMENT.

To the Special Joint Committee appointed under Assembly Concurrent Resolution No. 5, adopted by the Legislature of California, January 25, 1889.

SIR: In continuation of the sworn statement which by leave of your honorable committee I am permitted to submit for your consideration, I have the honor to now further state to you as follows, to wit:

1. At the date when the report recited in *Part No. 1* of this statement was submitted by me to the Governor of California, to wit, November 1, 1886, the Forty-ninth Congress had taken a recess, its first session having terminated and its second session not having then commenced.

At that date the *status* of "CALIFORNIA'S FIVE PER CENT CLAIM" was as follows, to wit:

Senate Bill No. 994, introduced by Senator Stanford, and House Bill No. 150, introduced by Hon. Barclay Henley, to pay said claim in first session, Fiftieth Congress, both prepared and drawn by me, were each pending before Congress: the Senate Bill in the Senate, and the House Bill in the House, both favorably reported upon; but no action taken on either thereof in either the Senate or House, *other than that* heretofore reported by me in my said Report of November 1, 1886, to the Governor of this State.

3. As soon as the second and last session of the Forty-ninth Congress convened, said Senate Bill No. 994, was taken up, considered, and passed by the Senate in the exact form as it had been recommended by the Senate Committee on Public Lands, immediately sent to the House, by it referred to its Public Lands Committee, by which it was immediately, unanimously, and favorably ordered to be reported, which was done by the Hon. Barclay Henley, a member of said committee. But the Forty-ninth Congress adjourned *sine die*, without giving any consideration to either said Senate Bill No. 994, or said House Bill No. 150, for this claim.

4. When the first session of the Fiftieth Congress convened, I again renewed my efforts in behalf of this *five per cent claim*, by preparing and drawing appropriate bills therefor, similar to those presented in prior Congresses, one of which I submitted to Senator Stanford, and one to Hon. Joseph McKenna, and one to Hon. Thomas L. Thompson, requesting each of them to introduce the same in the Congressional bodies of which they were members; and to have the same referred to their respective Public Lands Committees for consideration, action, and report.

5. This was done, and Senator Stanford's Senate Bill No. 418 was unanimously and favorably reported from the Senate Public Lands Committee by Senator Dolph; was considered and passed by the Senate on January 26, 1888, without a dissenting vote; was immediately sent to the House, by it referred to its Public Lands Committee; by it considered and ordered to be reported back January 31, 1888, which was done in two reports, to wit:

In majority favorable report No. 179, Part No. 1, Fiftieth Congress, first session, by Hon. Joseph McKenna, and in minority adverse report No. 179, part No. 2, Fiftieth Congress, first session, by Messrs. Jackson, Payson, and Holman.

This Senate bill was thereafter duly considered and debated for two days in the House; and on the last day of said debate, to wit, March 10, 1888, said Senate Bill No. 418 was transferred to the unfinished Calendar of "Bills on 'The Union Calendar,' considered under Clause 5 of Rule 24" of the House. Said Senate Bill No. 418 now stands as bill No. 2 on said House Calendar of January 21, 1889.

6. One of said House bills, to wit: House Bill No. 1235, was reported back from said Public Lands Committee on January 23, 1888, in two reports, to wit:

In majority favorable report No. 70, Part No. 1, Fiftieth Congress, first session, by Hon. Joseph McKenna, and in minority adverse report No. 70, Part No. 2, Fiftieth Congress, first session, by Messrs. Jackson, Payson, and Holman.

This House Bill No. 1235 has not yet been considered by the House; but it now stands as bill No. 2 on the first page on the Calendar of the House of Representatives, Fiftieth Congress, second session, on what is called "Calendar of Bills referred to the 'Committee of the Whole House on the State of the Union.'"

7. Simultaneously with the presentation of said bills I duly submitted to the Senate and House Public Lands Committees, and to Messrs. Stanford and Dolph, and to Messrs. McKenna and Thompson appropriate data in support of said bills, as I had ever similarly done in prior Congresses with their predecessors in support of this same claim.

8. When, however, I discovered that for the *first time* in the effort to secure a recognition of this claim a minority adverse report had been prepared and submitted to Congress against it, I deemed it my duty to prepare a *special* statement in support of this claim as set forth in said two bills, to wit: Senate Bill No. 418 and House Bill No. 1235.

This statement I prepared so as to meet and answer the views expressed in said minority adverse report, had it printed at my own expense, and submitted copies thereof to all the Senators and Representatives in Congress from California, copy of which statement I now submit herewith, make part hereof, mark Exhibit No. 22.

9. In view of the very early termination of the Fiftieth Congress—there being now left only seventeen working days—and in view of the present House Calendar of unfinished and unconsidered measures, comprising as it does a book of over one hundred pages, and so many clamoring for recognition and priority of consideration, and in view of the doubt as to whether the President's veto might not be exercised in regard to this measure, and in view of other matters appearing to me and generally if not fully understood and appreciated by the delegation in Congress from California, warrant my belief that no further action on this measure can be reasonably expected at the hands of this Congress.

10. Should this bill, or one similar thereto, become a law by which the State of California will be paid all that I have claimed in her behalf in these premises, then the State of California may reasonably expect to secure from this claim not less than \$500,000, and how much more no one is now competent to specifically state.

11. Your honorable committee will take due cognizance of the fact that by virtue of a change of policy by the General Government (heretofore partially and in the near future likely to be generally) adopted in regard to the future disposition of its agricultural public lands—such disposition being limited chiefly to homestead purposes—the sum to be secured from this claim will necessarily not be as large as it would otherwise have been, except for such proposed change of public policy.

NOTE.—As this Exhibit No. 22, prepared by me and printed at my own expense is quite lengthy, I beg to state that I will furnish each member of your honorable committee with a copy of same, as also with copies of each of certain other exhibits hereinafter referred, and numbered Exhibits Nos. 22, 24, 25, 28, 31; and I will also present copies of all of said exhibits to the *appropriate* branches or offices of the Executive Department of this State, for the purpose of making same matters of record in their respective offices, for any reference or value they may possibly have in the future in regard to the unpaid claims of this State against the United States—and which facts in view also of the cost of printing same—will obviate the necessity of printing said exhibits (so above numbered) at this time as a part of this statement.

SECOND.

At the date hereinbefore stated, to wit: November 1, 1886, the status of *California direct war tax claim* was as follows, to wit:

1. Senate Bill No. 995, that had been introduced in the Senate by Senator Stanford, and House Bill No. 164, that had been introduced in the House by Hon. Barclay Henley during the first session of the Forty-ninth Congress, to pay said claim, and both of which had been prepared and drawn by me, were pending before Congress; the Senate Bill in the Senate, and the House Bill in the House, Senator Stanford's Senate Bill having been favorably reported upon by Senator Morrill, and placed on the Calendar of the Senate for its consideration and action.

2. As soon as the second and last session of the Forty-ninth Congress convened, said bill of Senator Stanford, to wit: Senate Bill No. 995, was taken up, considered, and passed by the Senate, immediately sent to the House, by it referred to its Judiciary Committee, by which it was considered and ordered to be favorably reported to the House. But the Forty-ninth Congress adjourned *sine die* without giving any consideration either to Senator Stanford's said Senate Bill No. 995, or to Representative Henley's said House Bill No. 164, for this claim.

3. When the first session of the Fiftieth Congress convened, I again renewed my efforts in behalf of this direct war tax claim by preparing and drawing bills therefor, similar to those presented in prior Congresses, and in the exact form in which Senator Stanford's said Senate Bill had passed the Senate during the second session of the Forty-ninth Congress. One of these bills I duly submitted to Senator Stanford, one to Hon. Thomas L. Thompson, and one to Hon. Joseph McKenna, requesting them to introduce the same in the Congressional bodies of which they were members, have the same referred to their respective appropriate committees for consideration, action, and report.

4. This was done. Senator Stanford introduced in the Senate said bill, and Senator Morrill also introduced a copy of Senator Stanford's said bill, word for word, as it had passed the Senate in the Forty-ninth Congress. Senator Quay of Pennsylvania also introduced a copy of Senator Stanford's said bill. This measure, thereupon having been considered by the Senate Finance Committee, was unanimously reported to the Senate by Senator Morrill—then and now its Chairman—being the same Senator who had favorably reported Senator Stanford's similar bill for this claim in the Forty-ninth Congress. There being, therefore, before the Senate Finance Committee three similar bills, all of the same form, all having the same object, and all three being practically and substantially Senator Stanford's bill of the Forty-ninth Congress, it made but little difference which one was selected by Senator Morrill or by his committee, to report back to the

Senate for its consideration and action, so that the bill so accidentally (no doubt) selected was Senate Bill 139, Fiftieth Congress, first session, *that being the number* of the Senate Bill as introduced by Senator Morrill.

4. This measure so introduced by Senators Stanford, Morrill, and Quay, having been, therefore, duly considered by the Senate, it was passed by that body on January 18, 1888, by a vote of forty-eight ayes to ten noes, was immediately sent to the House, by it referred to its Judiciary Committee, by the latter considered, amended, and favorably reported back to the House with a recommendation that it pass as amended. In April, 1888, under an order or rule reported from the Committee on Rules of the House, this Senate measure was made the special order for consideration on April 4, 1888, on which date it was taken up by the House, considered, and debated, leading to the "*ten days direct war tax dead lock*," the most remarkable and celebrated deadlock, it is said, that ever occurred in the history of Congressional legislation since the foundation of this Government.

5. While this deadlock delayed favorable action on this bill at that time, yet it served to thoroughly educate every member of Congress whose attention had not been theretofore called to it, and also the country at large, on the wisdom, policy, and equality of the legislation on this measure, contained substantially in the form in which I had the honor to first bring it to the notice of Governor Perkins, of this State, and afterwards to the earnest consideration of Congress, through the California delegation.

6. Upon a vote of the House, in April, 1888, the said deadlock was broken by an agreement that the further consideration of this measure should be postponed until December 6, 1888, on which date this same Senate measure, as introduced by Senators Stanford, Morrill, and Quay, was again considered, debated for three days, and finally passed that body by a vote of one hundred and seventy-eight ayes to ninety-two noes.

7. This Senate Bill (No. 139, Fiftieth Congress, first session,) was thereupon sent by the House back to the Senate to receive the Senate's concurrence in certain amendments made thereto by the House. The Senate thereupon referred said bill to its Finance Committee, before which, at this date (February 13, 1888), it is either pending *sub judice* and not yet finally determined, so far as I am credibly informed, or it is still in the hands of the conferees of the Senate and House appointed to consider the same.

8. At all proper occasions and at all opportune stages of progress of this measure, I duly placed at the disposal of the California delegation in Congress, such data as in my opinion seemed to relate or were germane thereto, and as I had ever done in prior Congresses with their predecessors, in support of this claim.

Should this measure become a law by which California will be paid all that I have ever heretofore claimed in her behalf in these premises, then this State may expect to secure from this claim a sum not less than \$216,347 87.

THIRD.

At the date hereinbefore stated, to wit: November 1, 1886, the status of *California's Indian War Claims* was as follows, to wit:

1. House Bill No. 5566, that had been introduced in the House by Hon. Barclay Henley during the first session of the Forty-ninth Congress, which had been prepared and drawn by me, was then pending before the House with a favorable report, to wit: House Report No. 1298; first session, Forty-ninth Congress.

2. The object of that bill was to provide adequate legal machinery, by which all California Indian war claims, of every character, due by the United States to this State, or to its citizens, could be finally adjusted, and such as were not within the purview or jurisdiction of any other Act of Congress, and especially the Act of Congress of June 27, 1882, under which I secured an adjudication and payment of the Humboldt Indian war claim of 1861, that arose when Governor Downey was Governor of this State, the amount of which claim, as allowed by the United States, and collected by me, has already been paid, by two drafts delivered by me to the Governor of California, as set forth in my Exhibit No. 20, and wherein the Governor of California has refused to pay me any compensation for my services (and especially that compensation already by me earned, and as heretofore authorized and directed to be fixed by the Legislature of California, and which was definitely fixed by the Governor of this State in September, 1884), and for reasons alleged by him in his paper, my Exhibit No. 21.

3. As soon as the second and last session of the Forty-ninth Congress convened, and beginning at the commencement of that session, every proper effort was made to secure recognition for the consideration and action of said House Bill No. 5566, but without success; and the Forty-ninth Congress adjourned *sine die* without acting upon or considering that bill, or any other bill or any measure having for its object to give this State any adequate legal machinery by which this class of California unpaid Indian war claims could be adjudicated.

4. As soon as the first session of the Fiftieth Congress convened I again renewed my efforts in behalf of all of California's unpaid Indian war claims.

5. The Fiftieth Congress opened with two new Senators from the Pacific Coast, to wit: Senator Hearst from California, and Senator Stewart from Nevada. The long residence of these two Senators on this coast made both familiar with California Indian wars and Indian war claims, and they both knew of the fruitless results heretofore made when trying to secure an adjustment thereof by Congress.

6. It appeared to me, therefore, to be the part of wisdom and duty, that as so many fruitless efforts had been inaugurated in the House to there secure the desired result in this class of unpaid claims, that while not diminishing in the least our efforts for action by the House, we would also inaugurate simultaneously in the Senate efforts similar to those begun in the House.

7. As Governor Stanford had already introduced and charged himself with the care of the "California five per cent" claims and also with that of her "Direct War Tax" claim, and as I was attorney and counsel for Oregon and Nevada for their Indian and rebellion war claims, equally as for those of California, it seemed to me wise and judicious to bring to the special attention of Senators Hearst, Stewart, and Dolph all matters that in anywise related to either unpaid Indian or rebellion war claims of all of these three States; so that these three Senators might cooperate in securing some uniform legislation for these three States, and particularly in view of the fact that the items that constituted the rebellion war claim of one were quite identical with those constituting the rebellion war claims of all.

8. In view of these facts, Senators Hearst, Stewart, and Dolph, introduced sundry bills or amendments, prepared by me, looking towards securing the objects sought.

9. While these three Senators themselves found no difficulty in discriminating between Indian war claims and rebellion war claims, yet for the purpose of preventing the Congressional mind from getting confused by confounding the one class of war claims with the other, it was thought wise to prepare and introduce bills intended to cover *Indian* war claims separate and apart from those intended to apply to *rebellion* war claims, and to support each of the same with separate statements, and submit therein separate reports.

10. Keeping this precaution and intention in view, sundry bills and amendments to bills were introduced by these three Senators, referred to the Committee on Military Affairs, which committee, after maturely considering the same, authorized Senator Stewart (a member of the Senate Military Committee), to submit to the Senate a bill such as, while embodying the views of said committee, would also be a proper substitute for all other bills and amendments relating to the subject-matter, so far as California Indian war claims was concerned.

11. Therefore, on August 14, 1888, Senator Stewart reported such a bill, to wit: Senate Bill No. 3439, a copy of which is hereto annexed, made a part thereof, marked Exhibit No. 23. A unanimous report of said committee, to wit: Senate Report No. 2246, first session, Fiftieth Congress, accompanied this bill, which, when I left Washington on January 5, 1889, was on the Calendar of the Senate (No. 2315), awaiting the consideration and action of the Senate.

12. Similar bills to cover the same matters were prepared by me, submitted to Hon. Thomas L. Thompson, by whom they were duly introduced in the House, and appropriately referred, but it was deemed wise to defer action thereon in the House until definite action could be had in the Senate on said Senate Bill No. 3439, and which action it is my privilege to now report to your honorable committee, was this day heard in the United States Senate, where, notwithstanding the importance of the Constitutional duty of the Senate to help to count and to canvass the vote for President and Vice-President of the United States on this day, upon motion of Senator Stewart (who introduced this Senate Bill No. 3439), who advocated it in committee, who reported it to the Senate, and who at all times has demanded that Congress deal equitably and honestly with California and her citizens and with all holders of her unpaid, outstanding, and unredeemed obligations under her and their implied contracts through her with the United States under the Constitution of the United States and of this State, this Senate Bill No. 3439, as I am this day informed by telegraph from Washington, was, to the exclusion and consideration of all other public or private matters, taken, considered passed by the Senate, and duly transmitted to the House for its further consideration.

13. If this Senate Bill No. 3439, or any bill similar thereto, should become a law, by which California would be paid all that I have heretofore ever claimed in her behalf in these premises, then the State of California, her citizens, and the holders of her outstanding and unredeemed bonds, coupons, and certificates of indebtedness, may expect to secure thereunder a sum aggregating about, probably, \$605,287 64, of which probable aggregate there should inure to the State of California, probably, the sum of about \$200,000, and the remainder thereof, to wit: \$405,287 64, will inure to said private citizens and to said private holders of California's said now outstanding, unpaid, and unredeemed obligations now existing in the forms aforesaid.

14. A statement that gives the history, adduces the authority under which many of the aforesaid claims arose, together with a copy of every law

enacted and of every memorial and of every resolution passed by the Legislature of California on Indian wars and Indian war claims, and extracts from every report made by any of the committees of the Legislature of this State at any time, or made by others by its authority, and also extracts from all messages of all Governors of California upon Indian war claim matters generally, was in part prepared by me at my own expense, submitted to Senator Stewart, and by him submitted to the Senate Committee on Military Affairs, in support and explanation of his said Senate Bill No. 3439, copy of which statement is hereto attached, made part hereof, marked Exhibit No. 24.

15. In addition to the foregoing, I submit, that largely through the efforts of those of my legal associates whom I have associated with me to aid me in securing the appropriate results in these cases, Congress for the *first time* in its history in responding to our frequent and opportune presentation and prayers on this subject has earnestly addressed itself to formulating *general* legislation, by which all citizens of this State may hereafter be enabled to at least present their claims, and possibly receive from the United States some indemnity for losses that may have heretofore been sustained by them on account of Indian depredations.

16. Copy of a bill for this purpose, which passed the House July 21, 1888, and reported in the Senate, January 21, 1889, is hereto attached, made a part hereof, and marked Exhibit No. 25.

17. If this bill should become a law, and should prove insufficient to authorize a reimbursement to California all the amounts she has heretofore expended or assumed to pay to her citizens, or others, on account of Indian depredation claims, I feel quite confident that it is only a question of time when by an appropriate amendment to such a law adequate legislation may be secured. It were better, in my opinion, to let this bill now become a law and take it with all its crudities and defects, than none at all, trusting to a more liberal spirit in the future, and for a larger representation in Congress from west of the Mississippi River, to hereafter guide and mould this class of needed legislation.

FOURTH.

REBELLION WAR CLAIMS.

On November 1, 1886, the date heretofore stated, the status of "California's Rebellion War Claims" was as follows, to wit:

1. These claims made up from over one hundred thousand papers, and comprising as they do the total money expenditures of the State of California during the entire rebellion period, from April, 1861, to August, 1866; and which occupied me, aided by three clerks and sometimes more, for over three years (*and as usual at my own private expense*), was pending in the War Department for examination before the Board of Army Officers sitting as "*State and Territorial War Claim Examiners*," provided for under the Act of Congress approved August 6, 1886, ordered by the honorable Secretary of War October 6, 1886, to be convened for the examination of this class of war claims.

2. At this same date the rebellion war claims of the States of Oregon and Nevada were also pending before the War Department. The claims of those States, like those of California, were submitted to the Treasury and War Departments for their examination and allowance under the Acts of Congress of July 27, 1861, and June 27, 1882, either or both.

3. The War Department, which was the first to make examinations thereof, having taken up the rebellion war claims of these States under

said Acts of Congress, and having maturely considered the same, *decided that neither of said Acts gave to the War Department jurisdiction sufficient to examine, audit, or allow any portion of said rebellion war claims of either of said States.* This decision of the War Department was made in the Oregon case.

4. Thereupon the Oregon rebellion claims, as a test case, were referred by the War Department to the Treasury Department for its action under both of said Acts, and that Department, *first*, in the office of the honorable Third Auditor, and *second*, in the office of the honorable Second Controller, held that the Treasury Department, like that of the War Department, *was also without sufficient jurisdiction to examine, audit, or allow any part of any of said claims.* A copy of the decision of the Treasury Department is hereto attached, made part hereof, marked Exhibit No. 26.

5. Additional and supplemental legislation by Congress became therefore absolutely necessary in the rebellion war claims of the States of California, Oregon, and Nevada. For reasons similar to those set forth above in regard to California Indian war claims, the Senate Committee on Military Affairs authorized Senator Stewart to report to the Senate an omnibus bill for California, Oregon, and Nevada State rebellion war claims, which he did on the tenth day of August, 1888, in Senate Bill No. 3420, but made applicable exclusively to rebellion claims. Copy of this bill, Senate No. 3420, and of Senate Report No. 2014 to support same, first session of Fiftieth Congress, are hereto attached and made part hereof, marked Exhibit No. 27.

A statement that gives the history, adduces the authority under which most of said California rebellion war claims arose, together with a copy of every law enacted and of every resolution and memorial passed by the Legislature of California, asking Congress for action in relation to any portion of the subject-matter of said rebellion expenses, including extra pay, bounty, and relief, and the expenditures of every miscellaneous nature, and also extracts from every State report made to the Legislature by any authority thereof, and also extracts from all the messages of all the Governors of California touching said rebellion war claims was, in part, prepared by me, at my own cost and expense, submitted to Senator Stewart, and by him submitted to the Senate Committee on Military Affairs in support and explanation of said Senate Bill No. 3420, copy of which statement is hereby attached, made part hereof, and marked Exhibit No. 28.

Finding in my examination of the public archives of this State that the *continuity* of the correspondence between its Governors and the War Department, and also between the United States Military Commanders in California and the War Department, and between said Commanders and the Governors of this State, was broken, and that much valuable data were missing, and appreciating the value and necessity thereof, I requested Senator Dolph, on June 11, 1888, to introduce a resolution in the Senate calling on the War Department to supply a copy of the whole of such war correspondence. This was done, and the War Department was kept busily occupied with a very large force from June to December, 1888, in preparing copies of such correspondence from April, 1861, to August, 1866, all of which was sent to the Senate by the honorable Secretary of War, and ordered by the Senate to be printed on January 17, 1889, as per copy of Senate Report No. 2435, attached hereto, made part hereof, and marked Exhibit No. 29.

This correspondence is complete in six separate volumes for 1861, 1862, 1863, 1864, 1865, 1866, respectively, and was declared by the Senate Committee on State Public Printing, as a reason justifying the printing thereof

in the form ordered, that "it disclosed the high value of the historical data thus printed, and for this reason to be printed in brevier type and bound in blue cloth."

This correspondence thus secured at my suggestion, while it will aid me in finally proving up and fully establishing the validity of many of said claims, will also add to the public archives of this State matters of great value not now contained therein.

This Senate Bill No. 3420 was considered and passed by the Senate on the twenty-first of August, 1888; sent to the House; by it referred to its War Claim Committee, which reported it back favorably to the House on the fourth day of September, 1888, and now stands on page 19 of its Calendar "Committee of the Whole House on the State of the Union."

Upon a consultation had at my request between Mr. Stone, Chairman of the House Committee on War Claims, who favorably reported said Senate Bill No. 3420, and Hon. Thomas L. Thompson, representing California, and Hon. Binger Hermann, representing Oregon, and Hon. William Woodburn, representing Nevada, and myself, as attorney and counsel for these claims for all three of said States, it was agreed, so far as these gentlemen could agree thereon, that upon the *first call* by the Speaker of said War Claims Committee for the consideration of bills reported from that committee, that this Senate Bill No. 3420 should have the right of way over all other bills theretofore reported from that committee, and be considered by the House at this session, if possible; and the Senators and Representatives in Congress from California, Oregon, and Nevada now anxiously await that opportunity for further consideration of *this bill*, knowing, as they do, the very great importance to the people of these three States of this measure so long delayed, though importunately urged upon the attention of Congress for more than a score of years.

As Hon. Thomas L. Thompson, of California, has specially charged himself in looking out in the House for the measures touching these Indian and rebellion war claims for California, and such as Senators Stanford, Stewart, Hearst, Dolph, Jones, and Mitchell would advocate in the Senate for California, Oregon, and Nevada, and who is thoroughly advised of all the details and of the past history of all thereof, I duly consulted with him before I left Washington and since then to try, outside of the above understanding, to secure unanimous consent for the consideration and passage of this bill, which he promised he would try to secure. And should he be so fortunate as to secure the consent of the Speaker to call up this measure during the few working legislative days left the Fiftieth Congress, he may possibly secure favorable action thereon prior to March 4, 1889, *unless some sinister influence originating in this State may be brought to bear upon some Representative in Congress, outside of the California delegation, to prevent such consideration and action by making objection thereto.*

If this Senate Bill No. 3420, or a bill similar thereto, should become a law, by which California may be paid all that I have claimed for her in these premises, then she may reasonably anticipate and expect to secure from this claim an aggregate sum of about \$2,938,623 72, more or less.

The appreciation of my services and of my efforts by means of this omnibus bill (Senate No. 3420, which includes Nevada and Oregon as well as California) to secure a recognition and settlement of these rebellion war claims as entertained by the State officers of Oregon and Nevada (and which officers in said States have immediate custody and charge of all said rebellion war claims matters) is set forth in an extract from the report of the Controller, Hon. J. H. Hallock, of Nevada, to the last Legis-

lature of that State; and in the extract from the report of the Secretary of State, Hon. George W. McBride, to the last Legislature of Oregon. Copies of which extracts are hereto attached, made parts hereto, and marked Exhibits No. 26 and No. 30.

FIFTH.

INTEREST CLAIM.

At the date hereinbefore stated, to wit: November 1, 1886, the status of California's claim for *interest* on money expended by her for the "common defense," for war claim purposes, etc., was as follows, to wit:

1. This claim had been introduced during the Forty-ninth Congress, in a bill prepared by me and submitted to Hon. Barclay Henley, to wit: Bill H. R. No. 152, but which, on April 6, 1886, was unfavorably reported by Mr. Perry, of South Carolina, in House Report No. 1560, all during the first session of the Forty-ninth Congress.

2. This bill, with such unfavorable report, was placed on the Calendar of the House for its consideration and action. It seemed, therefore, to be the part of prudence not to proceed further in this measure during the Forty-ninth Congress, and by so doing avoid an adverse decision by the House during that Congress, which might possibly be successfully pleaded in a subsequent House to the disadvantage of this measure.

3. Deferring, therefore, all action on this matter until the Fiftieth Congress met, and then proceeding in concert with other attorneys and counsel representing other States, but equally with California interested in these premises, we succeeded, on seventh February, 1888, in having this measure favorably reported from the House War Claim Committee, in House Report No. 309, to accompany H. R. No. 1474, first session, Fiftieth Congress.

4. This measure, as recommended, is, in my opinion, not as it should be, and not as liberal as it ought to be, and because—

First—Its limits interest to *rebellion* war claims only, and does not apply to Indian war claims.

Second—It does not reimburse any State the amount of interest that has actually been paid out by such State, during or subsequent to the rebellion period; but simply proposes to allow interest from the dates when said rebellion war claims were filed with the United States, and only then upon such amount of said principal as the United States may have recognized and paid, and in the case of California the principal by her claimed, has been disallowed *in toto* by the United States.

5. This bill now stands number five on the first page of the House Calendar "Committee of the Whole House on the State of the Union." In view of the situation generally in Congress at this date, with only seventeen working days left, it would seem that no action will be had on this measure during the Fiftieth Congress.

6. It is difficult, if not impossible, for any one to now say what sum, if any, the State of California is ever likely to secure from this source, and because such sum is made indeterminate by virtue of many unknown factors entering therein in her case, and though I have claimed for California a reimbursement by the United States of all moneys which she has actually paid out in the *form of interest*, yet in view of the necessity for equality of legislation by Congress on this subject, such as must apply equally to all other States of the Union, and of the importance of the principle involved, and of the possible magnitude of the sums claimed to be due the several States on this account, it may reasonably be expected

that whatever Congress may do herein will be done only after having approached this subject cautiously, and that Congress will not formulate any measure for paying any interest to any State on any State claims that shall not have been wisely conceived and maturely considered.

In order that your honorable committee may, however, know that which Congress has done in the past, when measuring and meting out its liabilities for reimbursing other States, both principal and interest, under that provision of the Constitution which charges Congress to maintain the "Common Defense," and in order that such information should be at hand to aid me in supporting this claim of California for the interest by her paid out for the "Common Defense," I in part prepared with great care and great labor, a statement submitted to Senator Stewart, and by him submitted to the Military Committee in the Senate, to accompany his Senate Report No. 1286 in support of a similar liability represented by me and urged in Congress by him as due by the United States to the State of Nevada, copy of which is hereto attached, made part hereof, marked Exhibit No. 31.

SIXTH.

Refunding money on account of IMPROPER SALES, by the United States, of lands belonging to this State, and FEES PROPERLY due this State by the United States PAID on selections of lands not approved to THIS STATE BUT CANCELED BY THE UNITED STATES.

On November 1, 1886, the status of the above named claims was as follows, to wit:

1. Provision for the payment of the *first* of these claims had been introduced during the Forty-ninth Congress in a bill prepared by me and submitted to Hon. Barclay Henley, to wit: H. R. No. 3222, the subject whereof having been maturely considered, was favorably reported upon in House Report No. 1089, all during the first session, Forty-ninth Congress, but no action was had thereon in either the Senate or House during the remainder of the Forty-ninth Congress.

2. Proceeding when the Fiftieth Congress convened, in concert with other attorneys and counsel representing States equally with California interested in these premises, we succeeded, on eighth of February, 1888, in having this measure favorably reported upon by the House Public Land Committee in House Report No. 347 to accompany H. R. No. 6897, Fiftieth Congress, first session. This bill now stands No. 8 on first page of the House Calendar, "Committee of the Whole House on the State of the Union."

3. It is difficult, if not impossible, for any one to now say what definite sum this State is likely to secure from this source, and because it is made indeterminate by virtue of many unknown factors entering therein. I have, however, been of the opinion that the United States is indebted to this State on this account probably about \$25,000, more or less.

4. In view of the situation generally in Congress at this date, with only seventeen working days left, the chances would seem to be that no action will be had on this measure during the Fiftieth Congress.

5. In regard to the collection of the aforesaid fees, etc., that is a matter in which I am still engaged before the Interior Department at Washington, and wherein the labor is tedious and difficult; and though progress has been made, yet no final results therein have as yet been reached. While it is impossible for any one to now say what definite sum, if any, the State of California is likely to secure from this source, in advance of

the final summing up of all the proper debits and credits between this State and the United States on this account, I have, however, been of the opinion that the United States owes this State on this account probably about \$6,000, more or less.

SEVENTH.

I assume that your honorable committee will take due cognizance of the public facts, as follows, to wit:

First—That under Senate Concurrent Resolution No. 36, adopted March 1, 1872 (page 958 of the Statutes of California, 1871-72), Messrs. James E. Hale and Thomas M. Nosler were, on the fifteenth of March, 1872, employed by the Governor of California—Hon. Newton Booth—to collect for this State, from the United States, the rebellion war claims of this State, such as were recited in the preamble to said resolution, they to be paid as a compensation for their said services 10 per cent commission of the sums collected, contingent upon success and at their own expense.

Second—That on February 26, 1881, the Legislature of this State, reciting in a preamble the foregoing facts, did further declare that said 10 per cent commission was too small and inadequate a compensation for the services to be performed by these gentlemen in said premises, and in consequence of said recitals the Legislature of this State did, on the twenty-sixth day of February, 1881, authorize and direct that the aforesaid compensation of 10 per cent commission so to be paid to Messrs. Hale and Nosler, should be increased to a commission of 25 per cent of the sums or claims so collected from the United States for this State on account of said rebellion war claims; and the Legislature of this State did so declare in another concurrent resolution, to wit: Senate Concurrent Resolution No. 12, adopted February 26, 1881 (page 150, Statutes of California, 1881), and which said commission of 25 per cent of said sums or claims was so fixed by the Governor of California—Hon. George C. Perkins—on March 1, 1881.

That while the manner adopted by Governor Perkins in that case was somewhat different *in time*, from that subsequently established in my case by Governor Stoneman, in September, 1884, when an adjustment was made with me by him, as Governor of this State, for the commissions then due me as compensation for my services in collecting for the State of California from the United States, its "*Modoc Indian War Claims*," and also its claim for a "*Rebate of 15 per cent of its quota of the Direct War Tax*" assessed to this State by the United States under the Direct War Tax Act of Congress, approved August 5, 1861, yet in effect and substantially they amount to one and the same thing.

The difference being only in this, to wit: that while Governor Perkins fixed the commission of Messrs. Hale and Nosler at 25 per cent BEFORE *their work was seriously begun*, Governor Stoneman fixed the commission in my cases at 20 per cent ONLY AFTER *two parts of my work were fully performed*.

Both acts, however, of said Governors were *decisions* under and upon said resolutions of the Legislature, binding, as I submit, upon their successors in office. This action by Governor Stoneman is set forth in my Exhibit No. 10, reported by him in his biennial message to the Legislature in January, 1885, and printed on pages seven and eight to the Appendix to the Senate and Assembly Journal, Twenty-sixth Session, Part No. 1.

In view, therefore, of these recitals, and other matters, of which you will take due cognizance, or to be brought to your attention, I deem it proper

to state to your honorable committee that all the California rebellion war claims, herein reported and referred to by me, are the *identical rebellion war claims* which Messrs. Hale and Nosler have been so employed to collect from the United States for this State, in the manner and under all the circumstances aforesaid, and that my services in the collection of the principal of said "*rebellion war claims*" have been heretofore and continue to be performed under an employment from them.

So that I now recapitulate said claims in the manner following, to wit:

First—The unpaid State claims of the State of California against the United States, for which John Mullan has heretofore been employed by this State, or by the officers thereof, at his own expense, to collect for this State, in consideration of a contingent commission of 20 per cent of the amounts of the claims or sums that may be collected therein are as follows, to wit:

1. Five per cent claim, about.....	\$500,000 00
2. Indian war claims, about.....	200,000 00
3. Direct war tax claim.....	216,347 87
4. Moneys from improper sales of land, about.....	25,000 00
5. Moneys from fees due by the United States.....	6,000 00
	<hr/>
6. Interest on war claims, an indeterminate quantity.	
Possible aggregate, more or less.....	\$947,347 87

Second—The unpaid State claims of the State of California against the United States, for which Messrs. Hale and Nosler have heretofore been employed, by this State or by the officers thereof—at their own expense—to collect for this State, in consideration of a contingent commission of 25 per cent of the amounts of the claims or sums that may be collected thereon, are as follows, to wit:

1. California rebellion war claims, principal, making a possible aggregate of, more or less, \$2,938,623 72.

Your honorable committee, of course, know that it is one thing to allege a claim as due and payable to this State by the United States, and another and different and more difficult thing to establish its validity, and to collect the same when proceeding in either law or equity against the United States.

The manner in which I have endeavored to perform my duty and my part of the agreements and understandings heretofore entered into between this State or its officers and myself under the several employments as set forth in Exhibits Nos. 1 to 12, in Part 1 of this sworn statement, is partially certified to in sundry letters, which I hereto annex, make parts hereof, and mark Exhibit No. 32 (A, B, C, D, E, F, G, H, I, K, L, M, N, etc.), and I ask leave to file others should I deem it proper or necessary so to do.

While it is very difficult, and, under all the circumstances, now impracticable, for me to hurriedly compress within the space of a few pages of a brief sworn statement a full history of the application, continued by me without break for the last ten years, and which have been dedicated to the prosecution of these unpaid claims of this State against the United States, and give an account of the details of a very large expenditure of my own private means disbursed by me during these ten years, in a thousand and one necessary and proper ways to aid me in accomplishing and completing this very great work for which I have been employed, and which I undertook and contracted to execute at my own cost and expense, and which has ever been done *at my own private cost and expense*, and never at any time or place at the cost or expense of any one else whomsoever (and

especially at no time at the cost or expense of this State, for the letter of the Controller of this State, Hon. John P. Dunn, Exhibit No. 33, attached hereto, shows that no Controller's warrant was ever drawn to pay me a single dollar out of the Treasury of this State), yet your honorable committee, from the recitals herein contained and from the exhibits hereto attached, can form an adequate judgment, sufficient certainly to prove that whatever results may in the end attend the final adjudication of these now unpaid State claims of the State of California against the United States, that I have done *my full duty*, in my efforts continuously pursued for over the ten years last past, to maintain, defend, and establish, in both law and equity, their validity or justice, and that I have succeeded in keeping all these unpaid claims alive, in order that they might be freshly handled, and presented *de novo*, as they ever have been, by new and successive delegations in Congress from this State, the new delegations ever beginning where the old delegations left off, or as members of such old delegations passed away.

These old delegations in Congress, in whole or in part, have passed away, some by *death*, as in the cases of Senators Farley, Miller, and Sargent, all of whom (more or less connected or identified with matters pertaining to these unpaid State claims, by virtue of data presented to them through and by me), were in the Senate when I began, and while I was prosecuting these State claims; while others, by a *final retirement from Congressional life*, have terminated all identity with these claims, the fact being that there is not *now* in Congress a single Senator or Representative from this State who was in either the Forty-fifth, Forty-sixth, or Forty-seventh Congress, during which six years I continuously prosecuted these claims, or who was *there* at the date when I first began my work of representing, defending, and prosecuting any of the unpaid claims of the State of California against the United States, and in the manner and under my employments, as in this statement set forth.

Respectfully,

JOHN MULLAN.

At the Capitol, Sacramento, California, February 13, 1889.

STATE OF CALIFORNIA, }
County of Sacramento. } ss.

John Mullan, on first being duly sworn, says that he has read the foregoing statement, and all the exhibits thereto attached, made parts thereof, and knows the contents of all of the same; that the same are true, except as to those matters therein stated upon information and belief, and as to those matters he believes the same to be true.

JOHN MULLAN.

Subscribed and sworn to before me, this thirteenth day of February, 1889.

MATT. F. JOHNSON,
Notary Public.

For Exhibit No. 22, see note on page 3.

EXHIBIT No. 23.

SUBSTITUTE BILL.

[Fiftieth Congress, first session, S. 3439.]

August 14, 1888.—Mr. Stewart introduced the following bill, which was read twice, and referred to the Committee on Military Affairs:

A BILL authorizing the Secretary of War to ascertain the amount of money which has been expended and the obligations assumed by the State of California, growing out of Indian hostilities therein and upon the borders thereof, not heretofore reimbursed by the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War, the Board of War Claim Examiners, appointed under section two of the Act entitled "An Act for the benefit of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territory of Washington, and Nevada when a Territory," approved August fourth, eighteen hundred and eighty-six, be and he is hereby authorized and directed to examine all vouchers, accounts, papers, and evidence which heretofore have been or which hereafter may be submitted to him in support of the Indian war claims and Indian war obligations of the State of California, and to ascertain the amount of money actually expended and obligations incurred by said State, growing out of Indian hostilities therein and upon the borders thereof, and which have not heretofore been reimbursed by the United States.

The Secretary of War is hereby authorized and directed to ascertain the amount of interest paid and assumed by said State on obligations incurred for the purposes hereinbefore enumerated, and which has not heretofore been reimbursed by the United States.

The Secretary of War shall report to Congress the amount of money which may be thus ascertained to have been actually paid and assumed by the State of California on account of the matters above enumerated, including the amount of interest actually paid and assumed by said State on moneys borrowed for the purposes above enumerated and not heretofore reimbursed by the United States.

And the Secretary of War shall report the circumstances and exigencies under which, and the authority by which, such expenditures were made, and what payments have been made on account thereof by the United States; and the money necessary to enable the Secretary of War to comply with the provisions of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated.

For Exhibits Nos. 24 and 25, see note on page 3.

EXHIBIT NO. 26.

ACCOUNTS AGAINST THE GENERAL GOVERNMENT.

CLAIMS FOR EXPENSES DURING THE WAR OF THE REBELLION.

The claim of the State of Oregon against the United States for expenses incurred during the war of the rebellion, referred to on pages twenty and twenty-one of the printed report of the Secretary of State to the legislative

assembly of 1887, was filed in the office of the Third Auditor of the United States Treasury Department, August 21, 1884. Abstracts and vouchers in support of said claim were prepared and forwarded by my immediate predecessor in this office, Hon. R. P. Earhart, for examination by the War Department, under the provisions of the Act approved June 27, 1882. In a letter dated January 26, 1884, the Secretary of War, Hon. Robert T. Lincoln, referring to similar claims of the State of Nevada, stated that the statute approved June 27, 1882, was "deemed sufficiently broad to embrace all proper claims of said State and Territory of Nevada," and it was therefore believed that the claim of the State of Oregon would be examined and allowed under the provisions of said Act. But on November 8, 1887, Hon. Wm. C. Endicott, Secretary of War, decided that the claim of the State of Oregon did not come within the provisions of the Act of June 27, 1882, and directed that all the papers connected therewith be returned to the Treasury Department. The entire claim was disallowed by the Third Auditor of the Treasury Department in a report which I herewith submit for your information.

REPORT OF THE THIRD AUDITOR IN THE MATTER OF THE WAR CLAIM OF THE STATE OF OREGON.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE, }
March 10, 1888. }

The war claim of the State of Oregon (second installment) for moneys paid on account of military forces during the war of the rebellion, and interest thereon, was filed in this office August 21, 1884, under the Act of Congress, approved June 27, 1882 (12th Stat., 267).

All the papers in the matter of this claim were laid before the honorable Secretary of War, of date November 3, 1884, by the Third Auditor, for administrative action, under the Act to "reimburse certain States and Territories for expenses incurred in repelling invasion and suppressing Indian hostilities." The War Department returned the papers, declining to take any action upon them for the reason that the expenses did not fall within the provisions of that Act. (Letter of Secretary of War, November 1, 1887.)

The Act of July 27, 1861, under which the claim was originally presented, and is now examined, authorized reimbursement to the States for the cost of such troops as were employed in aiding to suppress the present insurrection, and the rule and practice of the accounting officers in applying provisions of said Act have extended only to the cost of troops mustered and received into, or actually employed in, the service of the United States, at the request or under the authority of the President or Secretary of War.

The items of the claims are as follows:

Pay of troops.....	\$9,907 00	
Supplies.....	3,998 46	
Transportation.....	727 42	
Services.....	2,276 63	
Clerical expenses.....	805 66	
Postal expenses.....	121 72	
	<hr/>	\$17,836 89
Interest thereon to September 1, 1883.....	24,971 64	-\$42,808 63
Bounty bonds to volunteers.....	129,041 02	
Interest thereon to September 1, 1883.....	62,466 45	-191,507 47
Relief bonds to officers and men.....	90,392 99	
Interest thereon to redemption.....	44,745 20	-135,128 19
Expenses in Adjutant-General's department.....	9,731 33	
Interest thereon to January 1, 1885.....	11,635 58	- 21,365 91
Total.....		\$390,820 10

By no reasonable construction can the provisions of the Act of July 27, 1861, be extended to embrace any of the amounts mentioned above. The items for the claim "for pay of troops, supplies, transportation, services, clerical, and postal expenses" appear to have been expenditures on account of troops for State purposes, or home guard, not mustered and received into or actually employed in the services of the United States at the request or under the authority of the President and Secretary of War. Many of the vouchers show this. It also appears by a report of the Adjutant-General, United States Army, dated March 7, 1888 (herewith), that only one regiment of cavalry, one regiment of infantry, and one independent company were raised in the State of Oregon during the war of

the rebellion, and that the expenses thereto were paid by the United States disbursing officers stationed at Portland, Oregon, and San Francisco, California, out of the appropriation for collecting, drilling, and organizing volunteers.

There is no evidence that the expenses mentioned above for "pay of troops, etc.," or any part thereof, were for any of the organizations named in the report of the Adjutant-General.

Passing to the items of claims for reimbursement on account of bounty and relief bonds issued to volunteers (bounty), I do not find that Congress has made any provision for the repayment of this class of claims. Such bounties as were authorized by law were paid by the United States directly to the men authorized to receive them. It will be seen from the tabulated statement that the State of Oregon claims reimbursement on account of interest amounting to \$132,183 29. In respect to the charge of interest, it is sufficient to say that, as the United States is not liable to the State for any part of the principal upon which the interest is computed, there can be no possible ground for a claim for interest. But even upon sums due by the United States interest is not allowable, unless when specially provided for by an Act of Congress. The Act of July 27, 1861, made no such provision, and interest has never been allowed to any State upon any war claim unless under express statute.

The entire amount of this claim, viz.: \$390,820 10, is therefore disallowed, and certified to the Second Comptroller for his action thereon.

JOHN S. WILLIAMS,
Auditor.

Soon after the above decision by the Treasury Department, Senator Dolph introduced a bill, which was referred to the Senate Committee on Military Affairs, specially authorizing the payment of said claim. I was thereupon requested by Captain John Mullan, the agent of the State for the collection of said claim, to forward rosters and muster rolls of the Oregon volunteers actually mustered into the service of the United States during the war of the rebellion, and other evidence tending to show that the expenses incurred by this State for bounties and extra pay, and in enlisting, equipping, and drilling troops during said war, were incurred solely for the payment of troops for services actually rendered the United States, or to prepare volunteers for service in the field whenever they should be called upon by the President or the Secretary of War. These documents were prepared in this office and forwarded to Captain Mullan, and were, together with other proofs and arguments prepared by him, submitted to the Senate Committee on Military Affairs, and were printed in the report of said committee recommending the passage of Senate Bill, No. 3420. This bill provides for examination by the Secretary of War of all accounts and evidence in support of the war claim of the State of Oregon, and directs the said Secretary to ascertain and state the amount of money expended for actual warfare, or enlisting, subsisting, and drilling troops, and for bounty and extra pay for volunteers and militia, and also the amount of interest paid on obligations incurred for the said purposes. The bill also directs the Secretary of War to report the circumstances and exigencies under which and the authority by which said expenditures were made, and what payments have been made thereon by the United States. This bill passed the Senate August 21, 1888, has been favorably reported by the House Committee on War Claims, and has been placed on the House Calendar for consideration during the present session. If this bill become a law, I shall endeavor to procure additional evidence to show that the expenses included in said claim were properly chargeable to the United States, and a reasonable appropriation should be made to meet such expenses as may be necessary for the prosecution of this claim.

INDIAN WAR CLAIMS OF 1877-78.

An Act of Congress approved June 27, 1882, directed the Secretary of the Treasury, with the aid and assistance of the Secretary of War, to examine and report to Congress the amount of all claims of the States of

Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, for money expended and indebtedness assumed by said States in repelling invasions and suppressing Indian hostilities. The expenses incurred by this State in paying the volunteer and military forces thereof for service in the Indian wars of 1877-78, constituting a just charge against the United States under the above mentioned Act of Congress, I caused to be prepared copies of the vouchers, muster rolls, and other papers relating to said expenditures, and forwarded the originals to Captain Mullan for presentation at Washington. These vouchers and papers were arranged and classified by Captain Mullan, in the form and manner required by the United States officers, and thereafter presented by him to the Board of War Claims Examiners. Further evidence was required by said Board respecting the actual service in the field of said forces, and affidavits showing the term of service of each company, and also the affidavit of ex-Governor Chadwick, showing the exigencies under which the volunteer forces engaged in said wars were called into service by the State, were obtained and forwarded by this department. The Board of War Claims Examiners has reported that an allowance of \$38,192 38 should be made on the first installment of said claims. Their report was approved by the Secretary of War December 22, 1888, and was transmitted to the Secretary of the Treasury for his action thereon. It is but just to Captain Mullan to say that he has been energetic, prompt, and diligent in representing this claim before the departments at Washington, and in notifying this department of the proofs required by the Board of Examiners.

EXHIBIT NO. 27.

[S. 3420. Fiftieth Congress, first session.]

August 6, 1888.—Mr. Stewart introduced the following bill, which was read twice and referred to the Committee on Military Affairs.

August 10, 1888.—Reported by Mr. Stewart, with an amendment, viz.: Insert the part printed in *italics*.

A BILL authorizing the Secretary of War to ascertain what amount of money has been expended by the States of California, Oregon, and Nevada for military purposes in aid of the Government of the United States during the war of the rebellion.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War, through the Board of War Claims Examiners appointed under section two of the Act of Congress entitled "An Act for the benefit of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, and Nevada when a Territory," approved August fourth, eighteen hundred and eighty-six, be and he is hereby authorized and directed to examine all accounts, papers, and evidence which heretofore have been, or which may hereafter be, submitted to him in support of the war claims of the States of California, Oregon, and Nevada, and Nevada when a Territory, growing out of the war of the rebellion, and in suppressing Indian hostilities and disturbances during the war of the rebellion, and of guarding the overland mail and emigrant routes during and subsequent to the war of the rebellion, and to ascertain and state what amount of money each of said States and Nevada when a Territory actually expended, and what obligations they incurred for the purposes aforesaid whether such expenditures were made or obliga-

tions incurred in actual warfare, or in recruiting, enlisting, enrolling, organizing, arming, equipping, supplying, clothing, subsisting, drilling, furnishing, transporting, and paying their volunteers, militia, and home guards, and for bounty, extra pay, and relief paid to their volunteers, in camp and field, to perform military services for the United States.

The Secretary of War is also directed to ascertain what amount of interest has been paid by each of said States and Nevada when a Territory on obligations incurred for the purposes above enumerated. The Secretary of War shall report to Congress the amount of money which may be thus ascertained to have been actually paid by each of said States and Nevada when a Territory on account of the matters above enumerated, and also the amount of interest actually paid or assumed by each of said States and Nevada when a Territory on moneys borrowed for the purposes above enumerated. *And the Secretary of War shall also report the circumstances and exigencies under which, and the authority by which, such expenditures were made, and what payments have been made on account thereof by the United States; and the money necessary to enable the Secretary of War to comply with the provisions of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated.*

[Senate Report No. 2014. Fiftieth Congress, first session.]

Mr. Stewart, from the Committee on Military Affairs, submitted the following report, to accompany bill S. 3420:

The Committee on Military Affairs, to whom was referred the bill (S. 3420) authorizing the Secretary of War to ascertain what amount of money has been expended by the States of California, Oregon, and Nevada for military purposes in aid of the Government of the United States during the war of the rebellion, having considered the same, report as follows:

During the war of the rebellion the States of California, Oregon, and Nevada were separated from the Atlantic States by over one thousand five hundred miles of almost uninhabited country. Much apprehension was felt on account of the exposed condition of those distant States, and the Government called upon them to assist in guarding the overland mail and emigrant routes, in preventing Indian outbreaks in the States, and to aid the United States in various ways during the war of the rebellion.

At the beginning of the war Nevada was a Territory, and was admitted into the Union as a State in 1864: but for the purposes of this report Nevada will hereafter be referred to as a State.

These States complied promptly with all the requirements of the General Government, and volunteered all the aid in their power to assist the United States. On the Pacific Coast during this time, and particularly in Nevada, prices of all commodities (and also the price of labor) were exceedingly high, and as a mining excitement existed in these States, it became necessary to extend aid in many ways in organizing, arming, equipping, furnishing, and maintaining volunteer soldiers and militia beyond the amount required for those purposes in the Eastern States. California, Oregon, and Nevada passed numerous Acts to organize and equip soldiers in compliance with the requests of the Government, for which they were compelled to expend large sums of money. They were also compelled to borrow money, upon which a large amount of interest has been paid.

An examination of all the facts connected with these claims, a statement of accounts showing for what the money was paid, and under what authority, involves too much detail for a committee of Congress to investi-

gate. They, therefore, recommend the passage of the accompanying bill, which simply provides for an examination and report upon the facts of the claims of each of these States, so as to enable Congress to take such action as may be just and proper in the premises.

The bill does not commit Congress to the payment of these claims in advance, nor a settlement upon any particular theory. It does not commit Congress in advance to reimburse these States for bounty or extra money expended by them in furnishing troops to assist the United States in suppressing the war of the rebellion, nor to the payment of interest on moneys borrowed. It simply provides for an ascertainment of such facts as to enable Congress to legislate intelligently.

A bill for the payment of the claims of Nevada has already been reported by a majority of your committee and is now on the Calendar of the Senate. The report in that case is very elaborate, and some members of your committee desire, before action is taken on it, a more authoritative statement of the case, which will be obtained by the examination now proposed. The claims of California and Oregon are of a similar character to those of Nevada. All these States were differently situated during the rebellion from the other States of the Union, and your committee, therefore, thought proper to have the same investigation and report made in each case, and have them all incorporated in one bill. The writer of this report has prepared an elaborate statement of the claims of California and Oregon, which has been printed, by order of the Senate, for the use of the committee.

The report on the Nevada claim, known as Senate Report No. 1286, and dated May 14, 1888, and the statement with regard to the claims of California and Oregon will assist the War Department in collecting the laws and orders under which these States expended the money in question, and your committee desire to call the attention of the Secretary of War to these documents in case this bill should become a law.

The laws that have been passed for the investigation of claims of other States are not applicable to the peculiar conditions of these States during the war of the rebellion, and there is no authority under them for the ascertainment of the necessary facts to enable Congress to determine what allowances should be made under the peculiar circumstances which surrounded these States at the time in question.

Your committee report the bill back with an amendment, and when so amended recommend that it do pass.

For Exhibit No. 28, see note on page 3.

EXHIBIT No. 29.

[Senate Report No. 2435, Fiftieth Congress, second session.]

Mr. Manderson, from the Committee on Printing, submitted the following report: To accompany letter from the Secretary of War, transmitting, in response to Senate resolution of June 11, 1888, report relative to the raising of volunteer troops to guard overland and other mails from 1861 to 1866.

The Committee on Printing, to whom was referred the above letter and correspondence, report as follows:

The correspondence furnished in pursuance to the Senate resolution of June 11, 1888, embraces letters found of record from April 15, 1861, to August 20, 1866, of the War Department with the division commanders of the Pacific and the department commanders of the Columbia and California, in relation to the subject of raising and organizing volunteer troops for the purpose of guarding the overland and inland mail and emigrant routes. It is compiled in six parts, by years, viz., 1861, 1862, 1863, 1864, 1865, and 1866.

An examination of the correspondence discloses the high value of the historical data thus furnished, and if for no other purpose than to preserve it intact and make it conveniently accessible, the committee would recommend that there be printed the usual number of copies, in quarto form, in brier type, and bound in blue cloth. The cost of printing the usual number will be \$966 50. For each succeeding thousand it will cost \$302.

EXHIBIT No. 30.

PROCEEDINGS IN CONGRESS TO REDEEM THE OBLIGATIONS OF THE UNITED STATES DUE TO NEVADA IN THIS CASE.

The circumstances under which these expenditures were made by the Territory and State of Nevada being exceptional, and their reimbursement not being provided for by any existing law, general or special, Senator Fair, of Nevada, on December 13, 1881, introduced a joint resolution in the Senate providing for the equitable adjustment of these claims of Nevada now under consideration, which was referred to the Committee on Military Affairs.

This committee, instead of reporting back the joint resolution, reported back a substitute in the form of a bill providing for the payment of the claims of several States and Territories, including the State of Nevada, and which bill finally resulted in the Act of June 27, 1882. This bill was reported on May 12, 1882, by Hon. L. F. Grover; and Nevada believed then and believes now that it was then the intention of Congress to equitably and explicitly provide for the reimbursement to her of the amount of money which she had actually and in good faith expended in these premises. This bill was accompanied by a report in which the following statement is made in relation to the claims of the State of Nevada:

NEVADA.

It appears by the report of the Adjutant-General, United States Army, of February 25, 1882, that one regiment of cavalry and one battalion of infantry were raised in the late Territory of Nevada during the late war of the rebellion, and that the expenses of raising, organizing, and placing in the field said forces were never paid by said Territory, but were assumed and paid by the State of Nevada; and that none of said expenses so incurred by said Territory, and assumed and paid by said State, have ever been reimbursed the State of Nevada by the United States, and that no claims therefor have ever been heretofore presented by either said Territory or said State for audit and payment by the United States. Under Section 3489 of the Revised Statutes, hereinbefore referred to, the payment of these claims is barred by limitation.

These forces were raised to guard the overland mail route and emigrant road to California, east of Carson City, and to do other military service in Nevada, and were called out by the Governor of the late Territory of Nevada upon requisition therefor by the Commanding-General of the Department of the Pacific, and under authority of the War Department, as appears by copies of official correspondence furnished to your committee by the Secretary of War and the General commanding the Division of the Pacific. * * *

PRESENTATION BY NEVADA TO THE UNITED STATES OF HER CLAIMS.

This bill reported from this committee, having become a law in an amended form, on June 27, 1882, thereupon the Governor and Controller of the State of Nevada transmitted to the Secretary of the Treasury and the Secretary of War, a detailed account of the moneys actually expended, and actual indebtedness assumed and paid by the State of Nevada on account of the volunteer military forces enrolled by the Territory and State of Nevada, as shown by the books of the State Controller. This statement of the claim of Nevada against the United States was prepared with great care by the proper officers of the State of Nevada, being first submitted by them to the Legislature thereof in printed form at the expense of the State, and thereafter transmitted, as above stated, with proper original vouchers and evidence of every kind, then in her possession, to the authorities of the Government of the United States, and as provided for in said Act of June 27, 1882.

DELAY OF THE UNITED STATES IN THE EXAMINATION OF NEVADA'S CLAIM AND THE CAUSES THEREOF.

This claim, with said vouchers and evidence, was first presented to the Secretary of the Treasury in 1883, where, being properly stamped, it was duly transmitted to the Secretary of War for examination and action thereon. It remained of record in the War Department, unacted on, up to and after August 4, 1886, because, as was stated to Congress by Hon. Robert T. Lincoln, Secretary of War, he required the aid of a board of at least three army officers to assist his department in such examination, and he requested Congress to make an appropriation of \$25,000, to defray expenses of the examination of the different State and Territorial claims presented under the Act of June 27, 1882. Congress delayed action upon these requests of the Secretary of War until August 4, 1886, on which date Acts were passed providing for said board of army officers, as asked for, and also appropriated \$10,000 to defray the expenses of said examinations. (See Vol. 24, Stats. at Large, pages 217 and 249.)

SECRETARY LINCOLN'S CONSTRUCTION OF THIS ACT OF JUNE 27, 1882, FOR THE RELIEF OF NEVADA, ETC.

Prior to any action of the War Department on the claim of the State of Nevada, and prior to any action by Congress on the request of the Secretary of War for a board of army officers to examine said claim, a bill was introduced in Congress by Senator Jones, of Nevada, and referred to the Secretary of War for report, providing for the payment of certain individual claims of citizens of Nevada, on account of Indian hostilities in Nevada in 1860, upon which the Secretary of War reported as follows:

WAR DEPARTMENT, }
WASHINGTON CITY, January 26, 1884. }

SIR: In response to so much of your communication of the twenty-second ultimo as requests information concerning Senate Bill 657, "to authorize the Secretary of the Treasury to adjust and settle the expenses of Indian wars in Nevada," I have the honor to invite your attention to the following report of the Third Auditor of the Treasury, to whom your request was duly referred:

"The State of Nevada has filed in the office abstracts and vouchers for expenses incurred on account of raising volunteers for the United States to aid in suppressing the late rebellion amounting to \$349,697 49, and for expenses on account of her militia in the 'White Pine Indian war' of 1875, \$17,650 98; also expenses of her militia in the 'Elko Indian War' of 1878, amounting to \$4,654 64, presented under Act of Congress approved June 27, 1882 (22 Statutes, 111, 112)."

These abstracts and vouchers will be sent to your department for examination and report as soon as they can be stamped, as that statute requires a report from the Secretary of War as to the necessity and reasonableness of the expenses incurred. This statute is deemed sufficiently broad enough to embrace all proper claims of said State and Territory of Nevada.

Very respectfully, your obedient servant.

HON. S. B. MAXEY,

Of Committee on Military Affairs, United States Senate.

ROBERT T. LINCOLN,

Secretary of War.

In accordance with this letter the Committee on Military Affairs reported back the bill referred to (S. 657), and asked that it be indefinitely postponed, and because of the explanation made by said committee, as follows, to wit: It will be observed that it is deemed by the department that the Act approved June 27, 1882, is sufficiently broad to embrace all proper claims of Nevada, whether as State or Territory. For convenience of reference the above Act accompanies this report, and an examination thereof, and of the construction thereon, satisfies the committee that no additional legislation is necessary.

The State of Kansas presented her claim to Secretary Lincoln under this Act, which claim was by him examined, audited, and allowed for almost exactly the sum that Kansas had actually expended for the use and benefit of the United States, and all of which allowance has since been paid to Kansas by the United States, and aggregating the sum of \$332,308 13 (23 U. S. Stats. 474.)

AFTER OVER FOUR YEARS DELAY, SUBSEQUENT TO THE PASSAGE OF THE ACT OF JUNE 27, 1882, THE UNITED STATES TAKES UP NEVADA'S CLAIM FOR EXAMINATION, WHEN THE VERY FIRST QUESTION RAISED IS ONE OF JURISDICTION, AND WHICH IS DECIDED AGAINST NEVADA.

After the passage of said Act of August 4, 1886, the War Department detailed a board of three army officers under Special Orders No. 232, dated October 6, 1886, to proceed to examine the claims arising under the Act of June 27, 1882, and in the manner contemplated and as provided for in said Acts. The claim of the State of Nevada was the first claim submitted to and examined by said board. This board being in doubt whether, under the terms of said Act of June 27, 1882, they could allow a reimbursement to Nevada of the amount by her expended for interest and extra pay to her troops while in the military service of the United States, referred these two questions to the Secretary of War for his decision. On February 8, 1887, after argument was submitted to him in support of these two elements of Nevada's claim against the United States, the Secretary of War decided as follows:

WAR DEPARTMENT. }
WASHINGTON CITY, February 8, 1887. }

SIR: The Department has received your communication of December 31, 1886, and January 28, 1887, submitting arguments in the claim of the State of Nevada, under the Act of June 27, 1882, for reimbursement of amounts paid by the State for "extra pay" and for interest. Also, your communication of the second instant, inclosing a resolution of the Senate and Assembly of Nevada, requesting favorable action on said claim. In reply, I have the honor to inform you that after a careful consideration of the subject, I am of the opinion that neither the extra pay nor the interest can, under the provisions of the Act, be allowed.

Very respectfully,

WILLIAM C. ENDICOTT,

Secretary of War.

JOHN MULLAN, Esq., Agent of the State of Nevada.

TWO SEPARATE REPORTS (A MAJORITY AND MINORITY) MADE BY THE ARMY BOARD OF WAR CLAIM EXAMINERS, THE MINORITY REPORT ALLOWING ONLY ABOUT TWO AND ONE HALF PER CENT OF THE AMOUNT ACTUALLY EXPENDED BY NEVADA, AND WHICH MINORITY REPORT IS APPROVED BY THE SECRETARY OF WAR.

It will be borne in mind that on January 26, 1884, Secretary Lincoln was of opinion that the Act of June 27, 1882, was sufficiently broad to embrace all proper claims of the State of Nevada, and the Committee on Military Affairs, in consequence thereof, reported to the Senate that that committee was satisfied that no additional legislation was necessary in regard thereto, while Secretary Endicott, on February 8, 1887, decided that the claims for expenditure for interest and extra pay to said troops while in the service of the United States could not be allowed by him under said Act; and further, by approving the award made by the minority examiner, and as will hereinafter be more particularly referred to, also disallowed the amount expended by Nevada and by her paid as her costs for the enrollment of those very troops so called into the service of the United States.

The day following the decision of Secretary Endicott, to wit: February 9, 1887, and contrary to a practice usual in similar cases, said Board of Army Officers, instead of submitting one report to the Secretary of War, submitted two separate and independent reports, one signed by the majority of said board, and the other in the nature of a minority report.

The total of this particular claim of the State of Nevada so presented to said board amounted to \$349,697 49. The amount thereof that was allowed in minority report was only \$8,559 61. (And this amount was allowed for salary, in part only, and expenses of the Adjutant-General, principally.—STATE CONTROLLER.)

This minority report was approved by the Secretary of War, thereby disallowing or suspending all of Nevada's claim except the paltry sum of 2½ per cent of the money actually expended by Nevada for troops called into the service of the United States, and at the urgent solicitation of the Government of the United States, in its hour of need, while this same board allowed nearly \$1,000,000 of the claim of Texas, to wit: \$927,242 30, being about 50 per cent of the claim of that State of \$1,867,259 13, as presented for reimbursement for the expenses of her Indian wars, which occurred since the rebellion, and prosecuted chiefly, if not solely, for the protection of the inhabitants of the State of Texas. It is worthy of remark that no minority report was submitted in the case of Texas.

The foregoing will show why all past efforts have been of so little avail.

The end is not yet, however, as our Senators and Representatives in Congress and State Agent are alive in the matter, and will maintain that "because of the fact that a small fraction only of this claim has been allowed and paid, and the great bulk thereof rejected, for want of jurisdiction only, there is no valid objection to an authorization by Congress for the payment of what is honestly due the State of Nevada," and a bill of ample scope for its examination and adjustment was introduced by Senator Stewart and passed by the Senate at the last session of Congress, and was reported favorably to the House of Representatives by the Committee on War Claims, but was not reached for passage. It will doubtless be pressed to passage at this session of Congress.

The reason given by the Board of Army Officers for large disallowances of the White Pine and Elko Indian war claims were that greater amounts

were paid the volunteers engaged in those wars than the regular pay of the United States army, and that many bills for supplies, etc., were exorbitant or not fully itemized.

Too much cannot be said in praise of Captain John Mullan, our State Agent in Washington, who has had these claims in charge, as he has been untiring in his efforts to secure favorable Congressional action on them for the last six years, and the amount of work he has performed is almost incredible. No attempt will be made to give a detailed statement of his ceaseless labors, but he has made arguments, in and out of season, drawn exhaustive statements and reports, and bills and resolutions innumerable, corresponded voluminously with our State Departments, and has ever been alert for opportunities for effective work.

He has also visited the State several times in pursuit of necessary information, and thus obtained that thorough knowledge of the claims which enabled him to work intelligently in the past, and will fortify him for further useful work in the future. He is well worthy the reward, "Well done, thou good and faithful servant."

For Exhibit No. 31 see note on page 3.

EXHIBIT NO. 32 A.

UNITED STATES SENATE,)
WASHINGTON, D. C., January 11, 1889.)

My Dear Governor:

Captain John Mullan left here a few days ago for California. You will pardon me for suggesting in his behalf that he has been very efficient in looking up and urging the payment of the California claims. I know nothing about the arrangements made with him as to compensation, and only wish to say it will be difficult to find a more faithful agent. The Government owes California a large amount of money—between \$3,000,000 and \$4,000,000—for moneys expended in the equipment and pay of troops and for services in Indian wars and in the suppression of the rebellion. Captain Mullan has been very diligent in collecting the evidence to establish the claims.

I thought it proper that you should know these facts in dealing with the matter, and I think it just that any person who attends to business here as Captain Mullan has should have credit for it, because diligence is rare and negligence the rule in Washington.

Yours very truly,

(Signed)

WM. M. STEWART.

HON. R. W. WATERMAN, Governor, Sacramento, California.

EXHIBIT NO. 32 B.

UNITED STATES SENATE,)
WASHINGTON, D. C., February 5, 1889.)

Captain JOHN MULLAN, Sacramento, California:

DEAR SIR: In response to your letter of the twenty-sixth ultimo, touching the matter of your agency for the Pacific Coast States for claims due them from the United States, I will say you have always been diligent in

pressing before Congress and its committees the claims due Oregon, California, and Nevada, as the many letters written to and the interviews had with me by you relating to them have clearly shown.

In the absence of the Senators from California, and at your request, I have on several occasions urged and secured the passage of bills and amendments in the Senate concerning claims of that State. In October last I assisted you in securing an appropriation in the Deficiency Bill of \$11,723 64, with which to pay California an Indian war claim allowed by the Treasury Department under Act of June 27, 1882. It was at your suggestion that there was obtained from the War Department the correspondence between that Department and the Governors of California, Oregon, and Nevada, and the military commanders therein, and of said military commanders with said Governors, and covering the period of the rebellion—from 1861 to 1866—so as to have a complete military history of that time, and called for by a resolution submitted by me in the Senate on June 11, 1888.

Very respectfully,

(Signed)

J. N. DOLPH.

EXHIBIT NO. 32 C.

CHAS. J. SWIFT.

WM. RIGBY.

BARCLAY HENLEY.

Law offices of Henley, Swift & Rigby, 303 California Street.

SAN FRANCISCO, January 30, 1889.

Hon. E. HENSHAW, State Senate, California :

DEAR SIR: I am prompted by what is due to an honest man and a faithful servitor of the interest of the State of California, to say something to you in regard to the claims of Captain John Mullan against the State for a certain per cent due him on amounts of money collected and to be collected from the Federal Government by the State.

I simply say what I believe no Representative or Senator from California will think of denying when I state that, but for the tireless zeal, industry, and wonderful activity shown by Captain Mullan in the prosecution of these claims, there would have been no money up to this day paid into the California Treasury by the Federal Government.

The truth is that it is needless to deny, and no person conversant with the machinery of legislation in Congress will deny, that it is almost impossible to get a bill through Congress affecting large public interests without having an active person or persons to work on the outside. Upon this proposition I may safely challenge contradiction upon the part of any person who has ever served a term in Congress. I was the first Representative who ever obtained a favorable report on the bill to pay to the State for school purposes five per cent of the net proceeds of the sales of public lands in the State of California. The proposition was a perfectly plain and simple one. Its justice was beyond controversy. Every public land State in the Union, except California, had received this percentage. It is obviously and indisputably, by every rule of right or fair dealing, due to our State, and yet such are the difficulties that hedge in and environ the progress of a measure of that character, namely, a measure looking to the payment of money from the Federal to the State Government, that it was with the utmost difficulty, although I worked incessantly to that end, that I could get the Public Land Committee to make the report; and then it was not unanimous, and encountered bitter opposition at every step.

I am as anxious as any honest man ought to be to claim all credit that is legitimately my due in connection with my public life; but I should dis-entitle myself to the respect of honorable men if I failed to acknowledge that, without Captain Mullan's assistance I should, probably, not have been able to obtain the favorable report on the bill that was made in the second session of the Forty-eighth Congress.

The effort had been vainly made in antecedent Congresses.

The question may be asked, the measure being so meritorious, why this opposition? The answer is plain. There is always in Congress a large class of men who, under any and all circumstances, oppose any measure involving the payment of any claims from the treasury. Judge Holman, of Indiana, has many followers.

As to the merits of the controversy between Captain Mullan and the State, I say nothing, because I have never carefully looked into the question; but I do say, and shall always say whenever it is opportune, that Captain John Mullan deserves well of the people of the State of California for what he has done at Washington.

I know that in saying this I run counter to public opinion as expressed in a number of influential journals. While, like all other men, I dislike to antagonize any one. I have felt that I ought to say what I have said.

As to whether it will influence your action or not depends upon how you will view it.

Yours very truly,

(Signed)

BARCLAY HENLEY,
Ex-Member of Congress.

P. S.—This letter you may exhibit to any one.

EXHIBIT No. 32 D.

GILROY, CAL., January 31, 1889.

Hon. JOHN MULLAN:

MY DEAR SIR: In reply to your letter of the twenty-eighth instant I can say that I remember well meeting you in Washington City, while I was a member of the Forty-eighth Congress, and that during that time you were seemingly working with fidelity for the adjustment of the claims of the State of California against the United States.

Yours truly,

(Signed)

P. B. TULLY,
Ex-Member of Congress.

EXHIBIT NO. 32 E.

PASADENA, CAL., February 6, 1889.

JOHN MULLAN, Esq., Sacramento, Cal.:

DEAR SIR: Your letter of January twenty-third reached me in due time. I do not know what I can say that will be of service to you before the present Legislature. I would gladly testify to any facts within my knowledge that would assist you in obtaining from the Legislature what justly belongs to you. I do know that you were untiring in your efforts in obtaining the money belonging to the State from the United States, and I have always labored under the impression that without your assistance this would have remained dormant for many years, if not forever.

Yours very truly,

(Signed)

H. H. MARKHAM,
Ex-Member of Congress.

EXHIBIT NO. 32 F.

WHEATLAND, CALIFORNIA, February 11, 1889.

Capt. JOHN MULLAN, Agent for California :

DEAR SIR: Yours of some days ago, addressed to me at Nicolaus, was not received by me; but in compliance with your verbal message, it affords me a pleasure, as well as it is a duty, to testify to the extent of your labors during the Forty-sixth and Forty-seventh Congresses. And I will state that you were indefatigable in California's behalf, and allowed no opportunity to escape to keep the members of Congress fully informed as to the merits of the various claims of California. And during my term in Congress no one could have been any more active than yourself.

Yours truly,

C. P. BERRY,
Ex-Member Congress.

(Signed)

Per R. & S. Telephone Line.

EXHIBIT No. 32 G.UNITED STATES SENATE,)
WASHINGTON, D. C., February 5, 1889.)*Captain JOHN MULLAN, Sacramento, California :*

MY DEAR CAPTAIN: I am in receipt of yours of the twenty-sixth ultimo, and have to state that during the last two years, while I have been in the Senate, I have been familiar with your labors in endeavoring to obtain payment of the claims of the State of California against the United States.

You have to my knowledge been energetic, active, and efficient, and have contributed largely in obtaining material and compiling the reports and statements which I have presented to the Senate with regard to them, copies of which you undoubtedly have, and they will show for themselves. Without your aid it would have been impossible for me to have made the reports. The documents upon which they depended were scattered throughout the departments in such a manner that it required much time and diligence to collect them and get them into shape to be presented in an intelligent manner. A stranger without an intimate knowledge of the history of these transactions, which you have, would have been unable to do the work. These reports will furnish the basis for all future action. There is no doubt that the government is indebted to the Senate of California in a very large sum of money. If justice is done, California should be paid about three and a half millions of dollars for expenses incurred in suppressing the rebellion. It may be compromised to some extent, but in any event the sum will be large, but it requires constant work and push. Your acquaintance with the mode of doing business in the departments and in Congress, and also, with a large number of the members of both Houses, has enabled you to become very efficient in pressing these claims. I suppose you have the bill which passed the Senate, requiring the Board of War Claims Examiners to report on the claims of California, Nevada, and Oregon. That bill is now pending in the House, and I am still in hopes that it will pass that body at this session. If such should be the fact, the report which you assisted me to prepare,

which will show for itself, will be a guide to the Commission in making their report. If this work had not been done, no Board of Commissioners would have looked up the case and compiled the evidence, from which they could have made a report, covering any considerable portion of the amount due the State. The other bill, providing for a like examination and report upon the Indian war claims of California, is still on the Calendar of the Senate, and has been delayed with all other business on account of the tariff, but I hope to pass it in a few days. Whether it will get through the House or not at this session is uncertain. If you had been able to have stayed here and watched these bills in the House, I have no doubt that we would have gotten them both through before the end of the session, which would have enabled us to present the case to the next Congress free from all questions of fact. The only question which could then arise would be whether the United States would pay an honest claim to the State of California. It was absolutely necessary to free these claims from questions of fact before favorable action could be had in Congress, and the work already done will be the foundation for any action that will hereafter be taken.

(Signed) Yours truly,

 WM. M. STEWART.

EXHIBIT No. 32 H.

UNITED STATES SENATE,)
 WASHINGTON, D. C., February 6, 1889. }

Captain JOHN MULLAN, Golden Eagle Hotel, Sacramento, Cal.:

DEAR SIR: I have received your favor of January twenty-sixth, in which you ask me to give expression to such views as I may entertain as to the fidelity and efficiency of your efforts here in behalf of the States of the Pacific in the matter of pressing the consideration of the claims of those States against the General Government.

In reply, I can only say that to my personal knowledge you have been energetic and untiring in urging upon the attention both of Congress and the Executive Departments the justice and equity of the claims, and the duty of the Government to recognize and pay them.

It gives me pleasure to state that in my opinion your services have been of great value to the States interested by the perseverance with which, in season and out, you kept bringing the claims forward, and by the earnestness with which in personal interviews, written communications, and formal arguments, you upheld the merits of the claims and insisted on their payment.

(Signed) Very truly yours,

 JOHN P. JONES.

EXHIBIT No. 32 I.

HOUSE OF REPRESENTATIVES, UNITED STATES,)
 WASHINGTON, D. C., February 7, 1889. }

Captain JOHN MULLAN, Sacramento, Cal.:

DEAR SIR: I am in receipt of your letter of the twenty-sixth ultimo. In reply I have to say that I can testify to your able efforts in behalf of the

State of California, in the various matters which you have pressed before Congress and the departments.

You have shown great fidelity in your attention to the business of the State, and I am sure you have rendered valuable services in the capacity in which you have acted.

Very truly yours,

WM. W. MORROW.

EXHIBIT No. 32 K.

OFFICE EXAMINERS STATE WAR CLAIMS, }
WASHINGTON, D. C., February 6, 1889. }

Captain JOHN MULLAN:

SIR: It affords us pleasure to say, in reply to your letter of the twenty-sixth ultimo, that we are fully cognizant of the strenuous efforts on your part to have considered and adjusted the war claims, in the settlement of which you have acted in the capacity of agent.

From personal knowledge we can bear testimony to the fact that your preparation by means of numerous abstracts and vouchers of the rebellion war claims of California is indubitably a work which could not have been accomplished without much expense and great painstaking in the matter of calculations, and in the arrangement of the mass of material connected with that claim.

Very respectfully, your obedient servant,

JAMES BIDDLE,
Lieutenant-Colonel Fifth Cavalry, Senior Examiner.

EDWARD HUNTER,
Major Judge-Advocate, Examiner.

FRANK WEST,
Captain Sixth Cavalry, Examiner.

[Done with the approval and sanction of the Honorable Secretary of War.]

EXHIBIT No. 32 L.

HOUSE OF REPRESENTATIVES, }
WASHINGTON, D. C., February 10, 1889. }

Captain JOHN MULLAN, *Sacramento, California:*

DEAR SIR: I have your favor of January twenty-sixth. I am able and willing to say that as the agent of the State of California, as you were known here, you earnestly and persistently labored in behalf of said State, asking a settlement of its claims against the United States.

Very truly,

MARION BIGGS.

EXHIBIT No. 32 M.

TREASURY DEPARTMENT, REGISTER'S OFFICE.)
February 9, 1889.)

JOHN MULLAN, *Esq.*, *Golden Eagle Hotel, Sacramento, Cal.:*

MY DEAR SIR: On my return to the city I find awaiting me yours of the twenty-eighth ultimo. I take the greatest pleasure in bearing testimony to your great diligence in looking up California claims and bringing the facts to my attention, when I was endeavoring to procure legislation authorizing the complete settlement of our State's accounts with the Federal Government on account of war expenditures.

You can assure all members who take an interest in the matter that I consider your services to have been unremitting, and very valuable.

Very truly yours,

W. S. ROSECRANS,
Ex-Member of Congress.

EXHIBIT No. 32 N.

UNITED STATES SENATE,)
WASHINGTON, D. C., February 9, 1889.)

Captain JOHN MULLAN, Sacramento, California:

MY DEAR CAPTAIN: I am in receipt of yours of the twenty-sixth ultimo, requesting that I state my knowledge as to the efforts and fidelity shown by you in representing the States of California and Oregon in this city, and in reply will say that since I have been in the Senate I have had occasion to know that you at all times seemed diligent and earnest in efforts to secure from Congress recognition of claims made on the Government by those two States.

Without being able to particularize, I can state that on frequent occasions I have known of your preparing amendments to bills, making suggestions to committees, and in various ways exerting yourself in a proper way to secure the active efforts of members of Congress and committees of Congress in behalf of the claims you represented.

I am, very truly yours,

JOHN H. MITCHELL.

EXHIBIT No. 33.

SACRAMENTO, February 11, 1889.

Captain JOHN MULLAN, Sacramento, California:

DEAR SIR: Replying to your communication of even date herewith, I would state that the records of this office show that no Controller's warrants were ever issued to you, or to your order, on account of any matters whatsoever named or referred to in Assembly Concurrent Resolution No. 20, adopted March 3, 1883, and in Senate Concurrent Resolution No. 3, adopted March 3, 1885.

Very truly,

JOHN P. DUNN,
Controller.

PART NO. 3.

COMPLETION OF THE SWORN STATEMENT
OF
JOHN MULLAN
RELATIVE TO THE
UNPAID CLAIMS OF THE STATE OF CALIFORNIA
AGAINST THE
UNITED STATES

Made to the SPECIAL JOINT COMMITTEE appointed under ASSEMBLY CON-
CURRENT RESOLUTION No. 5, adopted January 26, 1889.



SACRAMENTO:
STATE OFFICE, : : : J. D. YOUNG, SUPT. STATE PRINTING.
1889.

STATEMENT.

To the Special Joint Committee appointed under Assembly Concurrent Resolution No. 5, adopted by the Legislature of California January 26, 1889.

SIRS: In completion of the statement, which by leave of your honorable committee I have been permitted to submit for your consideration, I have the honor to now invite your attention to the recitals printed on page four, part one, of this statement as follows, to wit:

Fifth—If certain Acts of the Governor of California, hereinafter referred to, are to be recognized by the Legislature *as the acts of the State*, then I respectfully submit to you that on the third, sixth, tenth, and twenty-fifth of February, and on the sixth of March, 1888, the obligations and good faith of the State of California, due me under and by virtue of my said employments, seem *not* to have been maintained, and in consequence of certain acts of the Governor of California on said dates, and whatever purpose or intention may have been contemplated thereby, yet they nevertheless were matters that involved the good faith of this State in its obligations toward me, under and by virtue of my said employments, and which acts of the Governor, and the mode and circumstances of their performance and the effect thereof, I now respectfully submit to you were in violation of such good faith. These acts of the Governor are set forth in exhibits hereto attached, made parts hereof, marked No. 14 to No. 19.

Sixth—If a certain other act of the Governor of California, hereinafter referred to, is to be recognized by the Legislature *as the act of the State*, then I further respectfully submit to you that on the eighteenth day of January, 1889, the obligations and good faith of the State of California, due me under and by virtue of my said employments, seem *not* to have been maintained; and in consequence of a certain act of the Governor of California on said date, and which act consisted in his refusal to pay me the compensation as determined and authorized to be fixed and paid through him, by the Legislature of California, and due and payable to me on that date when I delivered to him two drafts for \$11,723 64, collected by me under and by virtue only of my said employments, from and delivered to me by the United States in liquidation and payment on account of one of said claims, recognized by the United States to be due to this State.

Seventh—The history of this particular claim was duly submitted by me to the Governor of California in a paper, copy of which is hereto attached and made part hereof, marked Exhibit No. 20.

Eighth—The reasons alleged by the Governor of California for such refusal, were set forth in a paper, copy of which is hereto attached and made part hereof, marked Exhibit No. 21.

Ninth—Whatever purpose or intention may have been contemplated in this refusal by the Governor of California to pay me for my services in this case, and as set forth in said Exhibit No. 20, yet it nevertheless was a matter that involved the good faith of the State in its obligations towards me, under and by virtue of my said employments, and which act of the Governor, and the mode and circumstances of its performance, and the effect thereof, I now respectfully submit to you were in violation of such good faith.

Tenth—As the Governor of California has failed, up to this date, to pay me for my services the compensation as aforesaid, for the collection of this claim from the United States for the State of California, therefore I now respectfully submit to you that the State of California has not fulfilled its part of its agreed obligation now due me in this case by this State.

1. The Governor of California having telegraphed me at Washington City, on February 3, 1888, these words: * * * "I wish you to distinctly understand that I do not recognize your authority to act in behalf of California. * * * I prefer receiving all further communications in regard to the matter from the duly accredited representatives from California in the Senate and in the House," was, in my opinion, sufficient justification to prevent me from making any response whatsoever, either by letter, telegram, or otherwise, at any time to any of the matters contained in Exhibits Nos. 14 to 19, or to matters referred to therein.

2. As soon, however, as I learned that the Governor of California had caused to be submitted to the honorable Secretaries of the Treasury and Interior Departments matters set forth in Exhibits Nos. 17, 18, and 19, I deemed it proper to take due cognizance of all thereof, by submitting to said officials of the Government of the United States the facts therein and my views of the laws thereof.

3. At none of the dates, when the matters set forth in these exhibits was submitted to the Treasury Department by the Governor of California, were there, in fact, any claims of any kind of this State against the United States pending therein, *sub judice* or undetermined, wherein any decision could properly be made by the proper officers of that department, charged by law with the due consideration, adjudication, and determination of any question of fact or law raised by virtue of the matters so then brought to the notice of that department by the Governor of California.

4. At all said dates all the unpaid claims of this State against the United States, *without a single exception*, were pending either before Congress or before some department of the Government of the United States, *other than* the Treasury Department; and, therefore, there was no case then in the Treasury Department to which the notice of the Governor of California could at said dates properly attach or apply.

5. Nor did any such actual case arise therein, until after October 19, 1888 (and that case was the Humboldt County Indian War Claim of this State arising in August, 1861, when Hon. John G. Downey was Governor of California, and provided for by the Act of Congress of June 27, 1882, and as set forth in my Exhibit No. 20 herein), that rendered it either proper, pertinent, or necessary to determine said matters.

6. It is sufficient, therefore, for the purposes of this statement, to inform your honorable committee that when the time had properly arrived in the Treasury Department to legally reimburse this State for said Indian War Claim, the time had also arrived therein when it was proper to consider, adjudicate, and determine all matters so raised by the Governor of California, and in connection with said claim; (which for six years and more had been duly represented by me as the agent and attorney of this State before every possible tribunal having jurisdiction therein and thereof) and in connection with my authority and identity therewith in these premises.

7. Prior to November 23, 1888, all these matters had been duly referred to the honorable Third Auditor of the Treasury Department, and on that date that officer *primarily* determined the same in words and figures as follows, to wit:

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE, }
November 23, 1888. }

Respectfully referred to the honorable Second Comptroller, recommending that Captain John Mullan be recognized as the attorney for the State of California, and the draft to be issued in the name of the Governor in payment of the amount found due the State as her claims. Certificate No. 3,219 of September 18, 1888, be remitted in his (Mullan's) care, as has been the practice heretofore in all such cases.

[Signed.]

JOHN S. WILLIAMS,
Auditor,
L. W. F.

8. On November 23, 1888, all these matters and said action of the honorable Third Auditor were duly reported to the honorable Second Comptroller of the Treasury Department, and that officer duly considered, adjudicated, and *finally* determined the same in words and figures as follows, to wit :

TREASURY DEPARTMENT, }
SECOND COMPTROLLER'S OFFICE, December 29, 1888. }

Respectfully returned to the Third Auditor approved.

Let the draft be made payable to the order of the Governor of the State of California, and be sent to him in the care of *John Mullan*, the Agent and Attorney of the State.

Memorandum of decision to follow.

(Signed)

SIGOURNEY BUTLER,
Comptroller, S. M. H.

Copy of this "Memorandum of Decision" is hereto attached, made part hereof, and marked Exhibit No. 34.

9. Your honorable committee, I assume, will take due cognizance of the public fact that, under the laws of the United States, the honorable Comptrollers of the Treasury Department at Washington control the entire disbursements of all the public moneys of the United States.

No public money whatsoever, wheresoever, or whensoever, is paid out by that Department of the Government of the United States *without* their knowledge, *without* their consent, *without* their signature. Their rulings, adjudications, and confirmations are the decisions of that Department, which *finally* adjudicate and *determine* to whom, how, when, where the public moneys of the United States are to be paid, and to whom, in any and every case, the drafts of that Department shall be delivered, under the supervision of the Secretary of the Treasury.

Their decisions on all controverted or contested questions of either fact or law properly arising within their respective jurisdictions, affecting individuals, States, or other corporations, *constitute the law of the cases in which they are rendered, and become the precedents to guide the subsequent actions of themselves and of their successors when deciding similar cases arising within their respective jurisdictions.*

These decisions the President does not review and cannot reverse, but which all Secretaries of the Treasury respect by conforming thereto.

This decision, therefore, of this very high officer of the Treasury Department is the law of my case, in so far as my present relation to these claims in that department is concerned; and while even that decision does not affirmatively declare the *whole* of my legal rights, as I have ever maintained and do still continue to maintain the same in these premises, yet it is sufficient *for the present*, and for the purposes of this statement that I rest that branch of my case where that decision has placed it. This decision is an *adjudication* by a co-ordinate branch of the Government having judicial powers; *that resolutions which did not appropriate money then in the treasury of this State confirmed my employment as attorney and agent of this State in these claims, and is binding on all having authority to deal therewith.*

It might possibly be information to your Honorable Committee for me to state that Hon. John G. Downey, elected Lieutenant-Governor of California, and who became its Constitutional Governor by virtue of a vacancy occurring in the office of Governor, attempted to revoke the employment of Hon. Samuel B. Smith, theretofore employed by this State to collect certain of its Indian war claims, and that the officers of the Treasury Department *in that, as in my case, ignored such attempted revocation, by refusing to recognize the same*, and in this connection I call your attention to the fact that said Samuel B. Smith had been appointed by Governor Downey himself. A report of that case was duly made July 27, 1862, to Hon. Leland Stanford, Governor of California, copy of which I attach hereto, make part hereof, and mark Exhibit No. 35.

12. The questions of fact and law so raised in the Treasury Department by the Governor of California, so disposed of by said Auditor, and so adjudicated and determined by said Comptroller, not having as yet had the effect of terminating that branch of my matter in the office of the Governor of California, wherefore the necessity of my appearing before your honorable committee, as a petitioner and in order to show that the good faith of this State towards me has not heretofore and is *not* now being maintained; *provided always, that all the said acts of the Governor of California in these premises, as hereinbefore or as hereinafter shown, are to be recognized by this Legislature as the acts of the State of California, which I deny they are.*

13. The Governor of California has incorporated in his regular biennial message to this Legislature an extended reference to me and to my relations to these claims, omitting, however, to extend any reference to any history of the claims themselves, as to when, where, how, under what authority they originated, their past condition, present status, future prospects, or efforts made to collect them, and results attending such efforts in every or any case.

I deem it, therefore, due myself, and eminently proper to take due cognizance of all the recitals in said reference, and in any and all published utterances of the Governor of California in reference to my relations to said claims. I am not willing and do not intend that my silence shall be construed as an acquiescence in or an acceptance, on my part, of the correctness of all the recitals therein made. Wherefore, I now submit to your honorable committee in a respectful manner, such reply as I deem at this time to be pertinent and due myself in all these premises; and hence attach hereto, make part hereof, and mark Exhibit No. 36, an extract from said message of the Governor of California.

14. The Governor of California says: * * * "*Since which time (January 19, 1874) the State has had no legally constituted agent or attorney in Washington,*" etc.

Now the Governor of California must have forgotten, by omitting to state or to disclose to the knowledge of this Legislature, or in any manner bring to its notice, the *public fact* that Messrs. Hale & Nosler were employed *as agents* on March 15, 1872, by the Governor of California, Hon. Newton Booth, under authority of a concurrent resolution of the Legislature of this State, adopted March 1, 1872, to collect at Washington the principal of the Rebellion war claims of this State against the United States, and which claims aggregate the sum of \$2,938,623, and to do this service for a commission of *10 per cent thereof*.

The Governor of California must have further forgotten, by omitting to bring to the notice of this Legislature the further fact that the Legislature of this State on February 26, 1881, after reciting the fact that said ten

per cent commission was a totally inadequate compensation for the service to be performed and the necessary expenses to be incurred by said agents, did also in another concurrent resolution, direct the same to be increased to a *25 per cent commission* for the collection of said claims (so aggregating \$2,938,623).

The Governor of California must have further forgotten, by omitting to bring to the notice of this Legislature, the further fact that under authority of said last named concurrent resolution (California Statutes, 1881, page 150), the Governor of California, Hon. George C. Perkins, on March 1, 1881, fixed the commission of Messrs. Hale & Nosler *at 25 per cent of said claims* (so aggregating \$2,938,623).

While this information might have been elsewhere found, it could certainly have been found recited on pages 468 and 469 of "*Mullan's California Claims Reports*," a book then and now in the office of the Governor of California, and in the State Library, and in probably every executive office in the Capitol of this State.

These two concurrent resolutions of the Legislature of this State, in the case of Messrs. Hale & Nosler, have not yet lost their life and validity by virtue of the collection of said claims, because *said claims, up to this date, remain yet uncollected.*

These two concurrent resolutions in their case have not yet been removed from the statutes of this State, *because they yet stand still unrepealed.*

These two agents, as employes of this State, are not now and heretofore have not been, before your honorable committee as petitioners, because the *Governor of California has not yet undertaken to either revoke, vacate, or disturb, either here or in Washington, their employments.*

Their employments are not mentioned by the Governor of California in his said message, or in any other state paper, or public letter published by the press for *public information*, nor are their names by virtue of any relation they sustain to these claims, referred to for *private or public condemnation*. On the contrary, their employment, to repeat language used by the Governor of California in my case, * * * "*have been allowed to continue* * * * *with great loss to this State.*" etc., etc., provided always the declaration of the Governor of California in my case be correct, *and all of which I deny.*

The Governor of California further says "*that my commissions equal the sum of \$800,000.*" etc.

This is error, because: First—That sum nearly equals the actual amounts of the principal of the claims which I represent under and by virtue of my said employments derived directly from this State.

Second—The amount of a claim, as alleged or presented, is usually one sum, and the actual amount usually allowed and collected is another and different, and generally a much smaller sum.

This proposition is no where better or later illustrated by Congress than in these very claims themselves, where, in an effort to secure an official examination into these very California Indian war claims, I desired that an inquiry be also authorized to be made to officially ascertain the amount of *interest* that the State of California has heretofore paid on or obligated. She herself has money to pay in these very old Indian war claims matters; and on Wednesday, February 13, 1889, certain proceedings were had in the Senate upon the bill therefor, to wit, Senate No. 3439, by me referred to on pages 8 and 9 of this statement, and printed on page 17 as my Exhibit No. 23, Part No. 2. These proceedings I extract from page 1905, Congressional Record of February 14, 1889, as follows, to wit:

CALIFORNIA INDIAN WAR CLAIMS.

MR. STEWART: I move that the Senate proceed to the consideration of Senate Bill 3439, Order of Business 2315.

By unanimous consent, the bill (S. 3439) authorizing the Secretary of War to ascertain the amount of money which has been expended and the obligations assumed by the State of California, growing out of Indian hostilities therein and upon the borders thereof, not heretofore reimbursed by the United States, was considered as in Committee of the Whole.

MR. SHERMAN: I move to amend the bill by striking out the clause beginning in line eighteen down to and including line twenty-two, as follows:

The Secretary of War is hereby authorized and directed to ascertain the amount of interest paid and assumed by said State on obligations incurred for the purposes hereinbefore enumerated, and which has not heretofore been reimbursed by the United States.

And also, in line twenty-six, after the word "enumerated," by striking out all down to and including "United States," in line twenty-nine, as follows:

Including the amount of interest actually paid and assumed by said State on moneys borrowed for the purposes above enumerated and not heretofore reimbursed by the United States.

So as to make the clause read:

The Secretary of War shall report to Congress the amount of money which may be thus ascertained to have been actually paid and assumed by the State of California on account of the matters above enumerated.

MR. STEWART: I have no objection to the amendment.

MR. COCKRELL: What is that amendment?

MR. SHERMAN: I have moved to strike out all that relates to interest. As a matter of course, if the Government ought to pay interest (which I deny, for the Government does not pay interest anyway), it should pay it without respect to any rate paid by the State of California.

MR. STEWART: The bill as it is would not commit us to anything except what has been done.

MR. SHERMAN: It is a recognition of the claim, and I think it had better be stricken out.

MR. STEWART: I do not care about delaying the bill by discussion, and I will consent to the amendment.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

For the purpose of a full and correct history of this measure I append hereto a copy of said bill, so amended, and which passed the Senate on February 13, 1889, and made part hereof, and marked Exhibit No. 37.

It is proper that I should here also state that Hon. Thomas L. Thompson, of California, made every proper effort to secure the consideration and passage of that Senate Bill, No. 3439 in the House, on February 15, 1889, (see Congressional Record, July 15, 1889, page 2,006), but objection was raised thereto by Hon. S. Z. Landes, of Illinois, but not to my surprise, because that Representative having been supplied with certain material relating to the State Claims of this State, has heretofore used the same apparently to defeat these very claims.

But resuming the allegation of the Governor of California that my commissions will equal the sum of \$800,000, I beg to repeat that *this is error*, but if your Honorable Committee believe this statement of the Governor be correct, then I hereby agree to now take in cash one fifth of that sum and relinquish and surrender forever to this State the remaining four fifths, and to enter into good and sufficient bonds to continue to faithfully prosecute to the end, all of said claims at my own expense, without other cost to this State, and without further or other compensation, and to do this in any manner your Honorable Committee can possibly indicate, or in which this Legislature can in any manner require.

The Governor of California further says "that I received \$7,735 30 out of appropriation of \$31,583 26 made by Congress," etc.

Now *this is another error*, and because the \$7,735 30, which I did receive, was the exact amount which the Legislature on March 3, 1883, directed to be paid to me for collecting for this State *two claims* from the United States, to wit:

1. Modoc Indian war claim.....	\$495 72
3. Fifteen per cent rebate on this State's quota of the Direct War Tax, \$254,538 67.	38,180 80
Making a total aggregate of	\$38,676 52

At the date (January 6, 1883) when I collected the *first* of said claims, the State of California appeared upon the books of the Treasury Department indebted to the United States in the sum of \$7,093 26.

This sum the United States claimed to be a debt due by the State of California on account of an unpaid balance of her aforesaid quota of said Direct War Tax.

Therefore the proper Comptroller of the Treasury Department, in this as in all like cases, instead of permitting the amount of the aforesaid Modoc Indian war claim to be paid to this State, either in money or "by draft drawn to the order of the Governor of California," directed that said sum should be duly credited, *pro tanto*, upon the books of the Treasury Department as a *set-off* to said amount of California's Direct War Tax debt, which was done, and when done, said debt was reduced to the sum of \$6,597 54, at which figure it continued until July 7, 1884, the date I collected for this State said 15 per cent rebate of said War Tax, amounting to the sum of \$38,180 80 (see Exhibit No. 6, page 288, "California State Claims Report," November 1, 1886).

The said Comptrollers of the Treasury Department taking the *same course* in this, as in the former case, directed that said balance of debt, \$6,597 54, should be deducted from said \$38,180 80, which was done; and being done, left a cash balance of \$31,583 26 then due the State of California, and for which a draft was only issued, made payable to the order of the Governor of California, duly delivered to me, by me duly delivered to the Governor of California, and the subject matter by him duly reported to the Legislature in January, 1885 (see my Exhibit No. 10, and pages 10, 11, 29, 30, 31, of Part No. 1 of this statement).

Due reference to this whole direct war tax matter was made by me in the report submitted to the Governor of California November 1, 1886, entitled "Mullan's State Claims Report," and found on the pages thereof as follows, to wit: 20, 21, 22, 127, 128, 131, 135, 140, 141, 142, 143, 144, 145, 146, 147, 159, 164, 176, 200, 209, 223, 246, 262, 277, 278, 279, 280.

While said report may not be of *material importance*, yet had it been carefully read by the Governor he might not have even made the aforesaid error.

The Governor of California further substantially says:

That my favorite method was by insidious attack upon the General and Common School Funds of this State, and whereby were worn a medley of legislative resolutions with crafty entanglements of executive appointments, etc.

While I have just cause to be aggrieved, and am exceedingly outraged by this language, subscribed in a public State paper by the Governor of California, language seldom used by the Courts of this State in the exercise of a prerogative—peculiarly judicial—even when addressing any of its convicted embezzlers and defaulters of the public funds of this State; and not even then until they are first charged under oath, legally tried, judicially convicted, and in mercy heard in their own defense: yet, even under this provocation and outrage, I cannot, at least now, forget the duty I owe this State as one of its citizens, to wit: *to respect the office of its Governor and to be respectful to whomsoever the votes of the majority of the people may have placed therein to perform its duties and to execute their will.*

Therefore replying even to said language and to all and to whatsoever possible meaning it was intended to convey, I state and declare that said recitals *are utterly without foundation and not true*

After the date of my first employment I was not in the State of California at any of the dates of any of my said employments ever thereafter made.

I was not in California at any of the dates when any of the Governors of California either prepared their messages or delivered them to the Legislature of this State in 1883, or in 1885, or in 1887.

I was not in California when the Legislature of this State was in session in either 1883, or in 1885, or in 1887, nor did I have hired in my service any person whomsoever to represent me in either of said years or on any of said occasions, or for any of the purposes of doing that which was done or left undone by any executive officer of this State, or by the Legislature thereof, except the Hon. Grove L. Johnson, in 1887 only, and then contingent only upon any attempt being made to annul my contract with this State.

18. The Governor of California further says: "*That no executive officer of this State in the absence of legislation was qualified to employ me,*" etc.

Now, that might or might not be so, but if admitted it would fail to prove anything in my case; and because my employments having all been made subject to legislative approval, and the Legislature having given its approval in a mode satisfactory to itself, my employments therefore and thereafter became the joint acts of the executive officers who conferred them, and of the Legislature that approved them whenever the latter acted thereon. If this power to employ me was not lodged with the constitutional executive civil officers of this State, then it was lodged with the Legislatures, and *vice versa*; but in my case the Legislature and constitutional executive civil officers (for it must be remembered that the Governor of California is not the *whole* Executive Department of California) united and concurred in what was done as in this statement set forth.

19. The Governor of California further says and repeats: "*That any attempt to ratify a void Act is itself void,*" etc. This too is another error, and the declaration of *very bad law*.

Acts void *ab initio*, and to be incapable of legislative ratification or validation, *are only those* which are forbidden by express provision of law, or those which are contrary to the policy of express law, or those which are contrary to public policy, or those which are *contra bonos mores* or immoral.

I submit that none of my employments belong to either of said classes.

But if any of the Constitutional civil executive officers of this State in any manner exceeded their powers, the Supreme Court of this State has not only declared the power of the Legislature to ratify the same, but has also declared that the *mode* of such ratification may be by *resolution*. This rule is a guide for all to follow, and which none are permitted to legally ignore. This rule, so laid down, is as follows, to wit:

In Grogan vs. San Francisco, 18 Cal. 590, 609, the Court, Field, C. J., says:

"The State may ratify the acts of her agents upon a subject within the constitutional control of the Legislature, when they exceed their powers. She may do this by legislation directly affirming the acts, or by legislation proceeding upon their assumed validity. The reason is obvious: There is no limitation as to the mode in which the State may give her assent, except that it must be by an act or resolution of her Legislature."

(See also 1 Dill. Mun. Corp. 3d ed., §139; *Crawshaw vs. Roxbury*, 7 Gray, 374.)

But if this even be not so and all these employments were void *ab initio*, then why the necessity of an attempt of the Governor of California to revoke them?

If void, what did the Governor of California find in them to revoke?

20. The Governor of California further says: "*That the Legislature of 1883 and 1885 was not prudent or wise.*" etc.

That may or may not be so; but in either event I submit that it is neither the province nor the prerogative of the Governor of California in 1889 to sit in serious judgment, or decide upon, or officially decree either as to the propriety or as to the wisdom of the Legislature of 1883 or 1885. That legislation has passed beyond the control of the Governor of California in 1889 to approve or disapprove, *it is before him now only for his execution.*

21. The Governor of California further says: "*That it is probable that the Legislatures of 1883 or 1885 had no just conception of the propositions involved.*" etc.

A sufficient reply to this is, that the employments acted upon by two Legislatures in 1883, and in 1885, were all duly laid before them by two Governors in their regular messages, or referred to in part by other executive officers, in their regular official reports duly published and printed; and all before any action was had thereon by either the Legislature of 1883 or that of 1885.

That these Governors, executive officers, and Legislatures, in their respective official capacities, represented in those years the will and were the choice of the people of this State, and that all knew full well what they were then doing; and that neither of them needed a monitor to instruct or lead them, nor a guardian to protect them.

22. The Governor of California further says, "*That it is difficult to see how (my employment or) appointments can be reconciled to the Constitution,*" etc.

It is a sufficient reply to this to state that the Governor of California is not the tribunal whose *official vision is called upon to see*, and decide upon the unconstitutionality of any action of the Legislatures of this State of 1883 or 1885; and should he undertake to exercise this prerogative to decide or to execute his own decisions therein, it does not follow that such decisions will be accepted as either orthodox or authoritative, or his attempted execution thereof binding upon those affected thereby. The Courts have decided and writers on the construction of constitutional and statutory law of acknowledged ability, whose writings are the text-books of the age, have declared that this prerogative is *judicial*.

The Governor of California further says, "*that my appointments or any employments were without a pretense of necessity,*" etc.

A sufficient reply to this is that two of his predecessors and other constitutional civil executive officers, acting in their separate and independent offices, which the Governor of California cannot rightfully invade, and whose functions to do or undo he cannot rightfully exercise, *thought differently*, and exercising a discretion therein, acted as in this statement set forth, but even their action was submitted to the Legislature of this State, with a recommendation for legislative approval. That the Legislatures of 1883 and 1885, with the whole subjects before them, duly approved and ratified said Acts of said executive officers, and that the matters are, therefore, now *res adjudicata* and ended; beyond at least the power of the Governor of California in 1889 to vacate or legally disturb.

The principle of *stare decisis* is no less binding upon the Executive Department of a State than it is upon the Judicial Department; and I submit that it is not only binding upon both, but also upon its Legislative Department in all matters that contain any proposition whereby is sought in any form to impair the obligation of any contract of employment.

24. The Governor of California further says: "*That his action in revoking my appointments has been governed by a determination to save to the State the large sum of money attempted to be given to me,*" etc.

A sufficient reply to this is, the inquiry as follows, to wit:

Why then so forgetful in the effort to save to this State the sum of my commissions—whatever they may be—not also and simultaneously make a similar determination, and a similar effort for a similar purpose, to save a sum five times as large as I expect to ever receive; by also revoking similar employments to collect similar claims for similar Commissions, paid in a similar manner, derived under similar authority, and proceeding under similar Concurrent Resolutions of this State in the case of Messrs. James E. Hale and Thomas M. Nosler?

While the employments of Messrs. Hale and Nosler to collect State claims, aggregating \$2,938,623 at a commission of 25 per cent thereof, are thus left intact, undisturbed, at no time place or manner referred to, not even brought to the notice of this Legislature either for information or condemnation, when so large a space in said message is devoted to recitals that relate exclusively to me and to my relations to similar claims?

Why this silence in their cases? Why should my employments alone have been singled out in the past for attempted Executive revocation and for oft-repeated public condemnation, and vigorously continued even up to this date?

Why should my name alone be improperly advertised far and wide, not only in this State, but throughout the country, to my great detriment, and that too not "by the certain and swift communication by the mails and express companies," but by the more swift means of the *telegraph*; even, too, if it should prove more expensive to this State, to the diminution, and it may be, detriment of the *telegraphic service fund* provided for the office of the Governor of California. The first notice of the official views of the Governor of California, alleged to be held by him in these premises, were brought to my notice by *telegraph* on February 3, 1888 (see my Exhibit No. 14, page 61, part 1, of this statement.)

Not only this but the same were renewed, and that too by *telegraph* (see my Exhibit No. 15, page 62 of this statement, Part No. 1).

Not only this, but notification of this fact was also transmitted to the Honorable Secretary of the Treasury, February 10, 1888, and that too by *telegraph* (see my Exhibit No. 17, page 63 of this statement, Part No. 1).

Not only this, but notification of this fact was also transmitted to the Honorable Secretary of the Interior and Commissioner of the General Land Office, February 25, 1888, and that too by *telegraph* (see my Exhibit No. 18, page 63 of this statement, Part No. 1).

Not only this but similar notices (as I am informed) were sent to each Senator and to every Representative in Congress from California, and that too by *telegraph*.

Why this sudden, simultaneous, swift, and, to this State, expensive procedure in my case, a mode which would have been harsh even had it been adopted and dealt out to an *expensive* and *faithless* employé in either private or public service?

I was not a charge upon, or an expense to, the public Treasury of this State, for I was working for a compensation that was to be contingent only at *my own expense*, and I had been so doing for nearly ten years last past.

Whether I had been active, diligent, and faithful or not, might or might not be for me *alone* to state; but that fact is fully and credibly vouched for, and abundantly corroborated by being certified to by those who officially know, and knowing have, over their own signatures, so declared,

and as set forth in their own letters and my exhibit herein, No. 32, A, B, C, D, E, F, G, H, I, K, L, M, N, O, P, pages 27 to 33 of this statement, Part No. 2; and which diligence and fidelity so therein certified to has not yet been publicly questioned, even by the Governor of California himself, so far as I now know.

Similar certificates from Hon. Thomas L. Thompson and Hon. J. K. Luttrell, came too late to be inserted in Part No. 2 of this statement, and hence I now attach them hereto, and mark same Exhibit No. 32 O and Exhibit No. 32 P (and Exhibits No. 39 and No. 40 herein).

25. To demand full payment for all claims is very easy. To collect partial payment for any claim is very difficult, where the United States is the debtor.

To introduce in Congress bills to pay these claims, have them read a first and second time, and referred to appropriate committees, is a very easy matter, even where the introducer of such bills is their author and framer, but that alone is not legislation, nor that *sumum bonum* which secures the collection of these claims.

Whatever might be done elsewhere, I affirm that no bill or resolution can be introduced in Congress as late as four or five P. M. in one day, reported back next day, without the party seriously affected by such bill or resolution being first duly and fully heard, and on same day successfully railroaded through either branch of that body, based only upon verbal statements not verified under oath, and without previous notice to the party so seriously affected thereby.

What Congress has expected and without which it would never act favorably upon these unpaid claims of California, *were facts*, properly supported, properly presented, the necessity, propriety, and wisdom of the proposed legislation fully and satisfactorily shown, and precedents adduced.

The record in my case abundantly shows that ten years of my life have been continuously, actively, and faithfully devoted, *at my own expense*, in laying broad and well the legal and equitable foundations upon which these claims now rest: and the chief labor having thus been done, the building thereon hereafter, will be the more easy by our Senators and Representatives in Congress from this State.

RESULTS OR CONDITION OF THESE UNPAID CLAIMS ON FEBRUARY 25, 1889.

But even now the *results* so far secured and the progress at this date made in these claims, are as follows, to wit:

First—Direct War Tax Claim has passed both Senate and House, and on this date, February 25, 1889, is in the hands of the President.

Second—Five Per Cent Claim has passed the Senate, been favorably recommended in the House, where it is now pending awaiting action.

Third—Rebellion War Claim has passed the Senate, been favorably recommended in the House, where it is now pending awaiting action.

Fourth—Indian War Claim has passed the Senate, is now on the Speaker's table in the House, where it is now pending awaiting action.

Fifth—Refunding Interest favorably reported in the House, and unfavorably acted on in the Senate.

Sixth—Return of moneys for improper sales of lands, etc., favorably recommended in the House, where it is now pending awaiting action.

Seventh—Return of fees in process of examination in the General Land Office, pending further possible action thereon by the head of that department.

26. While the public acts and public utterances of the Governor of California, hereinbefore and hereinafter recited, have inflicted great personal, financial, and professional injury upon me in various ways, and while until now I have chosen to be silent (not for the want of very much to say, but only because the time when I deemed it proper and opportune to speak had not, in my opinion, arrived, and at which I could properly and fully submit to this State, or to other of my legal employers, through the Legislature, that which I wished to speak, or as necessary to be by me spoken), yet I submit to your honorable committee that none of these acts and utterances have as yet divorced me from my duty or deterred me from pursuing the even tenor of the way I have hitherto marked out for myself to follow in connection with any of the matters in these premises set forth.

27. I have tried to believe that the Governor of California erred in the past, and I still try to believe that he continues to err in the present—for reasons as follows, to wit:

First—Because either he has not been fully informed, or because he has been misinformed as to all the *facts* in my case.

Second—Because he has either mistaken, or because he has misapplied the law in my case. The Governor of California has never at any time afforded me, or others knowing equally well with me, the facts, any opportunity, at any time, to explain to him *any* of the facts in any of these cases, *before he placed himself on record in regard thereto*, so far as I am now informed.

A continued want of knowledge of all the facts and a continued erroneous understanding or misapplication of the law, on the part of the Governor of California could eventually and inevitably but lead to embarrassments, misunderstandings, and discomfitures, which, while not of my creation I yet could make clear, disentangle, and easily understood, when at any proper time and place they were all compressed within the crucible of truth.

For these and other sufficient causes moving me thereto, I have sought to make this statement not only explicit, but so full that your honorable Committee can easily supply all that it lacks in either explicitness or fullness.

It is for these reasons that I now respectfully further pass in review the *causes* of the action of the Governor of California as alleged, or, as assigned by himself.

28. *First*—In his communication to me of February 10, 1888, he said: "That my employments," or as he termed them, my "appointments, were *vague, indefinite, and uncertain.*"

And yet the Governor of California, *in that very same communication*, described all my said employments with a perspicuity remarkable for clearness and fullness; by naming each claim, each subject, each employment, each employer; by enumerating each date of each Executive and of each Legislative action, and each sum, taking the precaution, seemingly, not to understate in any case, for he overstated in almost every case, the *greatest possible* sum in each, whenever he stated any sum at all.

After such description and enumeration what, I ask, was left of said employments or appointments to which the terms "*vague, indefinite, and uncertain*" could possibly apply?

But even if there was anything left to which even the Governor of California might apply these terms, then he should have remembered that by

following the maxim, "*Certum est quod certum reddi potest*"—nothing is uncertain in law or fact that can be made certain—he, too, might have discovered that even that which might have first appeared to him "*vague, indefinite, and uncertain,*" was not so in either fact or law.

29. *Second*—The reasons assigned by the Governor of California to the honorable Secretary of the Treasury were substantially that my employments were *without legal authority*; were not ratified, and that by virtue of the power in him vested as the Chief Executive of this State (*without, however, defining what those powers were, or the place where said Secretary or any one else could find them in any of the laws or Constitution of this State,*) etc., he revoked the same.

But the proper officials of the Treasury Department having the authority of law to consider, adjudicate, and decide upon the facts and the law in this case, in so far as these claims and these matters related to that Department were, or are concerned, not being able to reconcile the view of the law so expressed by the Governor of California, with their views of their own duty in the premises acted, adjudicated, decided, and finally declared as herein stated, and as set forth in Exhibit No. 34.

30. *Third*—The reasons assigned by the Governor of California to the Legislature are set forth in my Exhibit No. 36. In order that no error of the Governor of California, in this message, may escape unnoticed, or *acquiesced in by my silence thereon*, and even at the risk of traveling along the line of doubt between matters legislative and judicial, I now submit as follows, to wit: One of the questions that might possibly be asked herein might be whether or not the *resolutions* of the Legislature of this State, as adopted in my case March 3, 1883, and March 3, 1885, and also as adopted in the case of Messrs. Hale and Nosler, March 1, 1872, and February 26, 1881, *should have been approved by the Governor of California*, in order to give them full force and effect, or render them binding in good faith upon this State when dealing with either them or myself under our respective separate employments.

Section 407 of the Political Code of California declares that the Secretary of State is charged with the custody:

First—Of the enrolled copy of the Constitution.

Second—Of all Acts and *Resolutions* passed by the Legislature.

Third—Of the Journals of the Legislature.

Fourth—Of the Great Seal.

Fifth—Of all books, records, deeds, parchments, maps, and papers kept or deposited in his office pursuant to law.

The Secretary of State of California has the custody of all *Resolutions* passed by the Legislature of this State. I fail anywhere to find either in the Constitution or laws of this State, any legal distinction or legal difference between a *Concurrent* and *Joint Resolution* adopted by the Legislature, in fact and in essence they are one and the same thing and mode of expressing the will of the Legislature as contradistinguished from a Bill or Act.

Section 324 of the same Code declares that "every joint resolution, unless a different time is prescribed therein, takes effect from its passage;" and if there be no legal difference or distinction in fact and in essence between a joint or concurrent *resolution*, and if they are one and the same thing as a mode of expressing the will of the Legislature, then every concurrent resolution, unless a different time is prescribed therein, *takes effect from its passage*.

A careful examination of the old Constitution, ratified and adopted November 13, 1849, or as amended November 4, 1856, or September 3,

1862, or of the new Constitution, ratified and adopted May 3, 1879, no where discloses to me either the *necessity* or the *authority* of the Governor of California to approve either a *concurrent* or a *joint resolution* adopted by the Legislature of this State.

A similar examination of all the laws ever passed by the Legislature of California up to and including March 3, 1885, no where discloses to me the *necessity* or *authority* of the Governor of California to approve either a *concurrent* or *joint resolution* adopted by the Legislature, with probably one exception, where the Legislature proposes amendments to the Constitution of the State.

In view of these facts, and of the further fact that the Constitution of this State is the *primary source of power of the Executive*, and that the *Executive cannot properly exercise any power not granted to him either by it or approved by the Legislature either by Act or resolution*, it follows as legally as it does logically that a *concurrent* or *joint resolution* would acquire no additional virtue or validity by being approved or signed by the Governor of California; nor would it lack an iota of virtue or validity by the absence of either his approval or signature, and that if such resolution were either approved or signed by the Governor of California, *it would be simply superfluous and acts of supererogation.*

31. Another question might be, whether the Legislature has the power to approve and ratify employment of an agent or attorney heretofore employed by an executive officer of this State, made subject to the discretion and approval of the Legislature by a *Concurrent Resolution*?

The Constitution of California does *not prohibit* the Legislature, the law-making power of this State, from so acting; and as the *Legislature can exercise all powers not forbidden, and in any mode not otherwise prescribed*, it follows as legally as it does logically, that the Legislature in its unrestricted omnipotence had such power, and having the power it also had the prerogative to exercise that power in *any mode* its discretion determined, and that in these cases it has chosen to exercise such prerogative and discretion in the form or *mode of Concurrent Resolutions.*

These *resolutions* did not authorize the payment by any officer of this State of any money out of the Treasury of this State then in said Treasury, but only out of such antiquated claims of this State (so long neglected that they required expert knowledge to clearly present and successfully establish them) which my services could convert into money then in the Treasury of the United States, beyond the control of this State, except as in this statement set forth. It was therefore agreed that if I could secure the transmutation of these old claims into money, without any cost to this State, that then and in that event I should have a specific share in the fruit and result thereof, as my full compensation in these contracts of my employments.

32. Section 1965 of the Civil Code says "*that a contract of employment is one by which one who is called an employer employs another, who is called an employé, to do services for the benefit of the employer or of other persons.*"

If, therefore, the Legislature of California had the authority to approve my employment, and to do so in any mode not prohibited or otherwise prescribed by the Constitution or laws of this State, and that it has heretofore chosen to exercise that authority in the mode of a *concurrent resolution*, and that there is no legal difference or distinction, in fact and in essence, in the Constitution or under the laws of this State, between a *concurrent* and *joint resolution*, and that a *joint resolution* has all the effect and force of law from the time of its adoption by the Legislature, it follows, therefore, as legally as it does logically, that if I have diligently per-

formed, and continue to diligently perform, my part of the work recited in these employments, and in these resolutions, *that, then, the relations of this State and myself, by virtue of these agreements, were in the nature of a contract of employment, which the Governor of California, acting separately, cannot revoke, and the obligation of which the Legislature, I submit, even if it had the power, ought not in good faith, undertake to impair.*

If the rule laid down in the case of "The Trustees of Dartmouth College vs. Woodward, 4 Wheaton, 518," and followed for nearly one hundred years, is to continue to have in this State the respect it commands in other States, then I submit it would be difficult to distinguish my case from that celebrated case, the principle of which, when properly invoked in this Republic, has always staid the hand of attempted absolute, arbitrary, and unbridled power, come whence it may.

I therefore leave this branch of this case by simply again referring briefly to the case of "Grogan vs. San Francisco, 18 Cal. 609," wherein among other propositions, it was declared by the Supreme Court of California that a legislative grant (be it money, land, franchise, privilege, anything), is a contract within that clause of the constitution forbidding the passage of any laws impairing the obligation of a contract which cannot be destroyed by any subsequent legislation, and that perfect equality exists in all contracts, even when the State and its humblest citizen are the contracting parties; and great as is, and must ever be, the power of the Legislature, that even such power when exercised, must and can only legally be exercised in subordination to the principle which *protects and secures the inviolability of all contracts.*

33. The reasons assigned in writing by the Governor of California to me on the eighteenth of January, 1889, were, among others, in these words:

"It would appear that the honorable Secretary of the Treasury and yourself have conspired together against the promotion of public ends for the purpose of defeating, if possible, my authority in all these matters," etc.

This charge after a month's interval is *repeated* in another letter, addressed by the Governor of California to the honorable Secretary of the Treasury, bearing date February 18, 1889, and published in the public press of this State on February 19, 1889; copy of which letter, as published, I attach hereto, make a part hereof, and mark Exhibit No. 38.

Said charge so contained in said letter is in words as follows, to wit:

"It was *apparent to me then, as it is evident now*, that yourself and Captain John Mullan have conspired together against the promotion of the best interests, and for the purpose of defeating, if possible, my authority in all these matters," etc.

That which prior to February 18, 1889, had only "*appeared*" to the Governor of California to be a conspiracy had on that date, he declared, become "*evident*" to him as such.

The gravity of this charge so first made, and after a month's interval so *positively* repeated, embarrasses my reply.

For, if this charge be true, then a most serious crime has been committed, *not only against the great commonwealth of the State of California, but also against the greater commonwealth of the United States.*

If this charge be true, then the parties so charged should be at once formally and regularly proceeded against; tried by a tribunal having competent jurisdiction to try conspiracies against this State and its Governor, and if found guilty they should be severely punished.

But if, on the contrary, this charge is not true, but is utterly unfounded and totally unwarranted, and coming, as it does, in writing, officially subscribed by the Governor of California, as Governor, whose official declaration is of a

very high order, and publicly proclaimed through the public press, then I submit a much more grave crime has been committed, and I ask who shall measure, and where and how shall be measured, a remedy adequate to redress a grievance so grave, so aggravated, as this?

For all the purposes of this statement, I now declare said charge to be not only not true, but it is utterly unfounded, and is totally unwarranted.

What reply the head of the great financial department of sixty million of people, sworn to do his duty under the laws and Constitution of the United States, or what reply those officials of his department referred to in said letter may feel called upon to make thereto, is for them to determine, and not for me to say.

34. In order that other erroneous recitals in said letter of the Governor of California of February 18, 1888, may not be permitted to pass in silence or unnoticed, I deem it proper to further state as follows, to wit:

The Governor of California says as follows, to wit:

"I here say in justice to Governor Stoneman that no record of the issuance of this peculiar appointment claimed to be held by Mullan, appears in this office," etc.

It is sufficient for me to state that *the original of that appointment is in my possession*, that a full, true, and correct copy thereof is of record in the Treasury Department, that a full, true, and correct copy thereof was submitted by me on November 1, 1886, to Governor Stoneman himself, in my report made to him on that date, entitled "Mullan's California State Claims Report," and which book was in the office of the Governor of California on February 18, 1889, when he signed said letter.

A full, true, and correct copy thereof was my Exhibit No. 7 therein, and printed on page 327 of that report.

Copy hereof is also my Exhibit No. 9 in this sworn statement, Part No. 1.

The contents of said appointment were fully recited by Governor Stoneman himself in his regular biennial message to the Legislature in January, 1885 (see my Exhibit No. 10), and will be also found printed in volume 1, Appendix to Senate and Assembly Journal, twenty-sixth session, pages 7 and 8.

These matters were all before the Legislature in 1885, prior to the date March 3, 1885, when it took action thereon. (See my Exhibit No. 11 of this statement, Part No. 1.)

35. In said letter the Governor of California further says:

"That Governor Perkins did authorize Captain Mullan to represent the State to recover money expended in suppressing Indian hostilities, but that this appointment was never in fact ratified," etc., etc., etc.

This, *too, is error*, and because Governor Perkins having specially informed the Legislature in his regular message (see my Exhibit No. 5 in this statement, Part No. 1) in January, 1883, that he had appointed me to secure a reimbursement on account of Indian hostilities in this State, between April 15, 1861 and June 27 (printed 22), 1882.

The Legislature on March 3, 1883, duly approved my said employment for the Indian war claims provided for in said Act of Congress of June 27, 1882. (See my Exhibit No. 7 of this statement.)

The Indian war claims referred to in said letter of the Governor of California of February 18, 1889, and in said decision of the Honorable Second Comptroller, of January 25, 1889, arose in this State in August, 1861 (see my Exhibit No. 20 and sub-Exhibits 1, 2, 3, thereto attached), and were examined and allowed by the War Department, and confirmed by the Treasury Department, and appropriated for by Congress, all under said Act of June 27, 1882. (See page 575 United States Statutes, 1888, Act of Congress, October 19, 1888.)

36. I submit that as tedious as my task has been, I have tried to patiently and respectfully pass in review, *seriatim*, the numerous errors of the Governor of California, whether the same arose from commission, omission, deduction, inference, or otherwise.

37. I have sought to be exact, and hence I make oath to this statement, which I now submit to your honorable Committee, believing that in considering all the matters herein contained, or referred to, you will hold fairly balanced the scales of equal public justice, even when weighing therein, the acts of the Chief Executive officer of this State on the one side, and those of one of its private citizens on the other, and that you will, without fear, favor, or affection, justly determine and declare the rights of both, when you find the same have been assailed, impaired, or wronged by either, in so far as your legislative jurisdiction can extend.

38. I visit the Capital of this State at this time not to ask for charity, but to plead for justice in the defence of right, and in order that wrong might not prevail.

39. I have confined this statement to matters emanating from official sources only; with all others not verified under oath, I have now no concern, *unless your honorable committee or any of its members should deign to notice the same.*

40. At very great inconvenience to myself and family; at my own cost; to the detriment of my private business; I deemed it due to myself and the Legislature of this State to leave Washington, in order to be present at the earliest days of this session.

Here I have continuously remained, prepared at all times, and at any time willing to fully answer any and all questions that the Governor of California, the Legislature, or any of its committees might properly propound to me in any of these premises.

I have while here urgently sought the earliest opportunity to be fully heard in regard to all these matters, and I shall remain in Sacramento until this Legislature shall have adjourned *sine die*, for all these purposes only, and for none other.

41. Wherefore, in conclusion, I now respectfully invoke such action by this Legislature, through your honorable Committee, as shall be deemed appropriate herein, based on such facts as you may find, conclusions you may reach, and recommendations you may make herein.

Respectfully,

JOHN MULLAN.

At the Capitol, Sacramento, California, February 25, 1889.

STATE OF CALIFORNIA,)
City of Sacramento.)

John Mullan, on first being duly sworn, says that he has read the foregoing statement and all the exhibits thereto attached made parts thereof, and knows the contents of all of the same that the same (except the conclusions of law any where contained in any parts of this statement) are true, except to those matters therein stated upon information and belief, as to those and matters he believes the same to be true.

JOHN MULLAN.

Subscribed and sworn to before me this twenty-fifth day of February, 1889.

[SEAL.]

MATT. F. JOHNSON, Notary Public.

EXHIBIT No. 34.

TREASURY DEPARTMENT,)
SECOND COMPTROLLER'S OFFICE, January 25, 1889. }

Revocation of the Power of Attorney to a State Agent—Memorandum.

The question to be determined by me is, whether or not Captain John Mullan should be recognized by this office as the agent and attorney for the State of California in settlement No. 3249, of September 18, 1888.

On November 23, 1888, the Third Auditor returned this settlement (with all the accompanying papers) to me with the recommendation that Captain John Mullan be recognized as the attorney therein. On December 29, 1888, I returned the papers to him, bearing an indorsement that the draft based on said settlement should be made payable to the order of the Governor of the State of California, and be sent to him, in care of John Mullan.

The Act of June 27, 1882 (22 Stat. 111), authorizes "the Secretary of the Treasury to examine and report to Congress the amount of all claims of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territories of Washington and Idaho, for money expended and indebtedness assumed by said States and Territories in repelling invasions and suppressing Indian hostilities, and for other purposes." The first section of this Act provides "that the Secretary of the Treasury is hereby authorized and directed, with the aid and assistance of the Secretary of War, to cause to be examined and investigated" all said claims of the States and Territories above mentioned.

On the twelfth day of July, 1882, George C. Perkins, Governor of California, wrote the following letter to Captain John Mullan:

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT, }
SACRAMENTO, CAL., July 12, 1882. }

DEAR SIR: In reply to your favor of the twenty-second ultimo, relative to certain claims of this State against the United States, for money expended and indebtedness assumed in repelling invasions, suppressing insurrections, and Indian hostilities, I hereby authorize you, on behalf of the State of California, to represent the same in endeavoring to recover such amount as may be found due and owing by the United States Government to the State of California, on the express condition stated in your communication of the twenty-second ultimo.

Very respectfully,

GEORGE C. PERKINS,
Governor of California.

Captain JOHN MULLAN,
Washington, D. C.

Subsequently Governor Perkins sent the following message to the Legislature of the State of California:

Information having been received by me that the expenses incurred by this State, and by the citizens of Siskiyou and Modoc Counties for the suppression of Indian hostilities during the Modoc Indian war of 1872, had never been reimbursed by the General Government, I appointed Captain John Mullan, at Washington City, District of Columbia, to represent said interests, on behalf of this State, before the proper authorities of the United States, for the purpose of securing such reimbursement, and, also, for such as were provided for (for California) under the Act of Congress, approved June 22, 1882, authorizing an examination and adjustment of the claims of the States of Kansas, Nevada, California, Oregon, Colorado, Nebraska, and Texas, for repelling invasion and Indian hostilities therein, between April 15, 1861, and June 22, 1882.

Since writing the above I have just been informed, by telegraph, that success has attended Captain Mullan's efforts, and that the Modoc war bill, reimbursing the State, has passed both houses of Congress. * * *

Deeming the subject of considerable importance, and that the interests of the State required an agent to act in her behalf, with others employed in obtaining an equitable adjustment of these claims, I also authorized Captain Mullan to represent the State before the proper authorities at Washington, and would recommend that these appointments

be ratified and confirmed by you, and that you provide for his compensation, to be paid out of the sums he may recover for the State, contingent, however, upon his success, it having been expressly understood that such compensation should be left entirely to your judgment and discretion. * * *

GEORGE C. PERKINS,
Governor of California.

Afterwards, on the third day of March, 1883, the Legislature of California adopted the following resolution:

WHEREAS, The Governor and State Surveyor-General of this State have heretofore respectively appointed Captain John Mullan, of San Francisco, California, agent and attorney to represent the interests of the State of California, before the proper authorities of the United States, at Washington, District of Columbia, in the matter of the claim of this State to the five per cent net proceeds of the sales of the public lands by the United States; and also in the matter of the direct tax levied upon this State by the United States, under the Act of Congress of August sixth, eighteen hundred and sixty-one; and also of her claim arising during the Modoc war, in eighteen hundred and seventy-two; and also under the provisions of the Act of Congress of June twenty-seventh, eighteen hundred and eighty-two; therefore, be it

Resolved by the Assembly of California, the Senate concurring, That the appointments so conferred upon Captain John Mullan by the Governor and Surveyor-General, respectively, are hereby ratified and confirmed; and the Governor of this State be and he is hereby authorized and directed to fix the compensation for the services by Captain John Mullan heretofore, and that may be by him hereafter rendered, at twenty per cent of each of the sums or claims that may be by him collected from the United States, and to pay to him such per cent out of the moneys that may be collected by him and paid to this State on account of each of the foregoing matters respectively; *provided, however,* that this State shall not in any event become liable for any expenses, fees, and salaries of any nature whatever, other than such contingent commission.

SEC. 2. That the Controller of the State of California be and he is hereby authorized to deliver to Captain John Mullan, or to his authorized agent, all the original vouchers, certificates, and papers of every kind and nature against the Government of the United States, for or on account of each of the foregoing matters, respectively.

SEC. 3. That said Controller shall prepare and take from Captain John Mullan, or from his authorized agent, a receipt, in writing, bound in a book, same as he keeps in his office for all such papers as aforesaid, and which shall show what the papers are in each case, the date thereof, by what Board of Examiners passed, the amount and date of the warrant, and in whose favor drawn.

Governor Perkins was succeeded by Governor Stoneman, who reappointed Captain Mullan as the agent and attorney for said State, as the following message to the Legislature of that State will show:

In reference to the several claims of the State alleged to exist against the United States, I beg to report that the agent for this State at Washington, D. C., under the executive authority heretofore conferred upon him and duly ratified by the Legislature, has brought to the official attention of the proper authorities and departments of the United States, sundry claims of this State. While the reports made by him from time to time in regard thereto show considerable and favorable progress, still, only two of such claims have been allowed and paid by the United States, namely, that of \$495 72 on account of the expenses incurred by the State in the year 1872 for the transportation of arms to the northern counties during the Modoc Indian war; and that of \$38,180 80, on account of the rebate of the fifteen per centum of the direct war tax levied upon and assessed to this State under the Act of Congress approved August 2, 1861 (U. S. Statutes, Vol. 12, p. 291).

* * * * *

In this connection I beg to report that under the belief that a proper effort, made by a competent person to collect from the United States the old California Indian war debts, would be crowned with success, I have duly appointed Captain John Mullan, present agent, as agent also for such purposes, the appointment being subject to ratification by the Legislature. I have authorized him to present all the matters connected with the said war debt, including the interest paid by and due to this State on account of moneys heretofore expended and guaranteed by this State on account of Indian and other hostilities within its borders, to the proper United States authorities at Washington, with a view to the favorable recognition and payment of such claims. Such a presentation has been made by him, and the State may expect through his efforts an eventually favorable action and final adjustment.

The intelligence and fidelity displayed by Captain Mullan in the matters described fully reflect the confidence reposed in him by his selection for this special work, and I therefore recommend that the Legislature confirm the executive appointment of Captain Mullan made by me for the purpose above described.

(Signed)

GEORGE STONEMAN,
Governor of California.

In pursuance of said message the Legislature of California adopted on the third day of March, 1885, the following resolution:

WHEREAS, The Governor and State Surveyor-General of this State, respectively, have heretofore appointed Captain John Mullan, of San Francisco, California, agent and attorney to represent the State of California before the proper authorities of the United States, at Washington, D. C., in the matter of the claims of the State of California against the United States, growing out of past Indian hostilities, and for interest on moneys heretofore expended by this State on account of military operations herein and borders hereof, and in recovering all land fees heretofore illegally paid to the United States by this State; and whereas, in pursuance of concurrent resolution number twelve, adopted February twenty-sixth, eighteen hundred and eighty-one, and in pursuance of Assembly joint resolution number thirty, adopted March ninth, eighteen hundred and seventy-two, James E. Hale and Thomas M. Nosler were duly appointed and commissioned agents on behalf of the State of California and the Governor thereof, by themselves and their duly constituted agents, to collect from the Government of the United States the cost, charges, and expenses properly incurred by the State of California for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the insurrection against the United States; and whereas, said James E. Hale and Thomas M. Nosler have duly constituted said Captain John Mullan their agent and attorney, in pursuance of the foregoing authority conferred on them, in their names, places, and stand, to demand and receive all said moneys from said Government of the United States, and in and about the premises to act as their agent therein; therefore, be it

SECTION 1. *Resolved by the Senate of California, the Assembly concurring,* That the appointments so conferred upon Captain John Mullan by the Governor and Surveyor-General, respectively, are hereby ratified and confirmed, and the Governor of this State be and he is hereby authorized and directed to fix the compensation for the services by Captain John Mullan heretofore, and that may be by him hereafter rendered, at twenty per cent of each of the sums or claims that may be by him collected from the United States, and to pay to him such per cent out of the moneys that may be collected by him and paid to this State on account of each of the foregoing matters respectively; *provided, however,* that this State shall not, in any event, become liable for any expenses, fees, and salaries of any nature whatever, other than such contingent commission.

Sec. 2. That the proper State officers of the State of California be and they are hereby authorized and directed to deliver to Captain John Mullan, or to his authorized agent, all the original vouchers, certificates, and papers of every kind and nature relating to the claims of this State against the Government of the United States, for or on account of each of the foregoing matters respectively, and also all Controller's warrants that have been heretofore paid and canceled, and which may be needed to perfect any of the claims of this State against the United States, represented by him.

Sec. 3. That said State officers shall prepare and take from Captain John Mullan, or from his authorized agent, a receipt in writing, bound in a book, same as they keep in their offices for all such papers as aforesaid, and which shall show what the papers are in each case, the date thereof, by what Board of Examiners passed, the amount and date of the warrant, and in whose favor drawn.

The letters and messages hereinabove set out are taken from a brief of Captain John Mullan, filed with me May 8, 1888.

On the tenth day of February, 1888, the Governor of California sent the following telegram to the Secretary of the Treasury:

EXECUTIVE OFFICE, SACRAMENTO, CALIFORNIA, }
February 10, 1888. }

You are hereby notified, and attention called to the fact, that Captain John Mullan has no authority from me as agent or attorney in representing the State of California before your Department.

Therefore, he cannot receipt for or receive any drafts, warrants, or moneys belonging to the State of California, and you are instructed to hold such drafts, warrants, or money subject to my order.

R. W. WATERMAN,
Governor.

To the Honorable SECRETARY OF THE TREASURY, Washington, D. C.

At the same time he sent a letter to Captain Mullan, a copy of which is as follows:

EXECUTIVE OFFICE, SACRAMENTO, CALIFORNIA, }
February 10, 1888. }

Referring to my telegrams of the third and sixth, respectively, and after due and careful consideration of the matters therein referred to, I am convinced that certain appointments as agent and attorney to represent the State in Washington made to you by the Governor and State Surveyor-General, and which you endeavored to have ratified and confirmed with a commission of 20 per cent fixed as your fee by concurrent resolution of March 3, 1883, and March 3, 1885, should be, and are hereby most emphatically revoked.

This revocation applies specially to the appointment by Surveyor-General Minis, November 1, 1878, in the matter of the "Five per cent claim," aggregating nearly \$1,000,000.

To the appointment of Ex-Governor George C. Perkins, December 12, 1882, in the matter of "Direct tax of August 5, 1864," aggregating over \$200,000; also, that of March 7, 1882, in the matter of the "Modoc war claims;" also, that of July 12, 1882, being "Claim for money expended and indebtedness assumed in repelling invasions and Indian hostilities," together with interest on the same; also, claims under the provisions of the Act of Congress of June 27, 1882, known as the "Rebellion claims," aggregating \$2,938,623.

To the appointment of Ex-Governor George Stoneman, March 31, 1884, in the matter of "Claims of the State of California growing out of Indian hostilities," and in the matter of all moneys that have been paid in or may be due by the State of California on account of Indian war claims, Indian war bonds, or coupons issued by the State for the purpose of recovering from the United States the payment of the whole of these, together with the interest due on same, aggregating several hundred thousand dollars.

To the appointment of Surveyor-General Willey, October 24, 1883, and December 1, 1885, in the matter of "Refunding certain fees," and "Indemnity for certain swamp lands" therein mentioned.

The appointments above enumerated, when taken in connection with the appointments named and attempted to be confirmed in the concurrent resolutions of March 3, 1883, and March 3, 1885, are vague, indefinite, and uncertain, and that there may be no mistake, I hereby revoke all appointments held by you from the Governor or State Surveyor-General of whatever kind or nature, or named in said concurrent resolutions.

R. W. WATERMAN,
Governor.

Captain JOHN MULLAN,
Washington. D. C.

Since the several appointments were made and confirmed as aforesaid, Captain Mullan has been acting as the agent and attorney for the State, pursuant to the appointments, and has been recognized by this office as the agent and attorney for the State in the prosecution of this claim.

Governor Waterman contends that Captain Mullan "is acting without competent authority, and in direct violation of law—never having been legally appointed or confirmed—who has filed no official bond, and has never qualified as such officer or appointee, as provided by law of this State" [California.]

Captain Mullan, on the other hand, maintains that his interest in this agency is of such a character that even the parties to it cannot, without his assent, annul it, and, *a fortiori*, the Governor cannot substitute himself for one of the contracting parties, and arbitrarily revoke, vacate, and annul the same.

I. The most important question which arises in this case is, whether the agency of Captain Mullan, granting its validity, can, under any circumstances, be revoked without his consent; because its solution will clear up some obscurities in the further discussion of this employment.

If his authority is coupled with an interest, as he maintains in his brief, there will be no necessity to inquire into the power of Governor Waterman in the premises, because, according to all the authorities, his agency cannot, in that event, be determined at the will of his principal, whoever that may be.

Captain Mullan was authorized to collect the claims designated in the concurrent resolutions mentioned, and to pay the money to the Governor, from whom he was to receive a certain per centum thereof as his compensation.

The contract was to give him a part of the property to be recovered, as a contingent fee for his services. Such contracts, though condemned by the ancient law, are not only sustained by the modern law of this country, but are of frequent occurrence (2 Pomeroy, Eq. Jur. § 936, n²; *Hoffman v. Val-lejo*, 45 Cal. 564).

It is well settled by the decisions of the Supreme Court of the United States that an agreement to pay a contingent fee for the preparation and advocacy of just claims before the Executive Departments of the Govern-

ment is not in violation of law or public policy (*Stanton v. Embrey*, 93, U. S. 548; *Wright v. Tebbitts*, 91 *id.* 252).

Such contracts, then, being entitled to judicial respect, the question arises whether they can be revoked at the pleasure of the principal. Does the fact that the agent has an interest in the proceeds of the collection, or the proceeds of sale, invest him with irrevocable authority?

Unquestionably it would, if the agent is also the creditor of the principal, and this power is given to enable him to pay the debt out of the proceeds (*Story on Agency*, 9th ed. § 477; *Travers v. Crane*, 15 Cal. 12).

It is also held by the Supreme Court of the United States that an agreement to prosecute a claim for a portion of the proceeds, with full power to compromise it, is a power conferred coupled with an interest which is not revoked by the death of the principal (*Jeffries v. Mut. Life Ins. Co. of N. Y.*, 110 U. S., 305).

In *Missouri v. Walker* (125 U. S., 339) the *Jeffries* case is referred to, and it is intimated that the clause giving the power to compromise as the attorneys should please, thereby enabling them to establish the claim, imparted an irrevocable quality to their authority.

At first view it would seem that the opinion of the Court in *Wylie v. Coxe* (15 How. 415) supports the irrevocableness of contracts like the one under consideration. Coxe had been employed by Samuel Baldwin, through his brother and agent, John Baldwin, to prosecute a claim against the Republic of Mexico for personal outrages and losses of property through the officers of that government. He brought the matter to the notice of this Government and urged indemnity. Finally, an Act of Congress was passed and a Board of Commissioners authorized to examine and decide such claims. Coxe did everything that was done in bringing the case before our Government for indemnity. The fee for his services was to be 5 per cent of the claim recovered. The Commissioners allowed the claim, amounting to \$75,000. The claimant, Baldwin, however, had died before the claim was presented to the Commissioners. Wylie took out letters of administration on his estate, and though he did not employ Coxe, yet, supposing that he had been engaged as counsel by the widow, he allowed him to take part in the preparation and presentation of the case before the Commission. Subsequently an agent of the widow came on from Mexico, bringing a will of Baldwin, which appointed his wife executrix. This agent dismissed Coxe as attorney in the case, and after this he was not consulted by Wylie, and any services subsequently rendered were voluntary. It was contended, on this statement of facts, that Coxe had no right to the 5 per cent commissions. The Court says:

"The defendant [Wylie] seems to suppose that as, on the death of Samuel Baldwin, the agency of his brother ceased, the contract which had been made by him was no longer in force * * * he had no power to annul the contract, if made *bona fide* by the complainant [Coxe], and the business had been faithfully prosecuted by him."

In another portion of the decision it is said:

"The evidence proves that the complainant was to receive a contingent fee of five per centum out of the fund awarded, whether money or script. This being the contract, it constituted a lien upon the fund, whether it should be money or script. The fund was looked to, and not the personal responsibility of the owner of the claim."

It might be considered that this justifies the conclusion that Coxe's authority was considered by the Court as coupled with an interest, and, therefore, not affected by the death of the claimant, Baldwin. But a closer study of the language of the Court makes it apparent that it was admitted that the death did work a revocation. The Court expressly con-

tend that the administrator could have "dispensed with the further services of the complainant" [Coxe]. They held that he could not "annul the contract," which, in my opinion, simply means that he should not be deprived of the fruit of his past efforts, though he could be removed from the position and prevented from finishing his work. It is in line with those decisions which hold that a broker who has opened negotiations with a purchaser, without concluding a bargain, is entitled to a proper proportion of the agreed commissions if the party who employed him to sell concludes the bargain himself (*Martin v. Silliman*, 53 N. Y. 615; Story on Agency, 9th ed. § 329, and cases cited).

Admitting, however, that the doctrine of *Wylie v. Coxe* is in support of the irrevocability of contracts of this character, it is nevertheless true that all the authorities, including late decisions of the same Court, hold that a contract to prosecute at his own expense certain claims, or to make certain collections or sales of property, and to receive as compensation for his services a certain rate of commissions on the amounts collected or of the proceeds of the sale, does not confer upon the agent a power coupled with an interest in the subject of the contract, which makes the contract of agency irrevocable.

A leading case on this subject in this country is *Hartley's Appeal* (53 Penn. St., 212). There was an ordinary agency established by letter of attorney to collect moneys that might be due the principal from the estate of her father. For their services the attorneys were to have one half of the net proceeds of what they might recover for her. The Court, following the definition of an "interest coupled with a power" laid down by Chief Justice Marshall in the leading case of *Hunt v. Rousmanier's Adm'rs* (8 Wheat., 174), says:

"The plaintiffs in error claimed that this clause rendered their power irrevocable by the principal, under the idea that it was a power coupled with an interest. This was a mistake, as all the authorities show. To impart an irrevocable quality to a power of attorney in the absence of any express stipulation, and as the result of legal principles alone, there must co-exist with the power an interest in the thing or estate to be disposed of or managed under the power. * * * In the case in hand the power and the interest could not co-exist. The interest the appellants would have would be in the net proceeds collected under the power, and the exercise of the power to collect the proceeds would be *ipso facto* to extinguish it entirely, or so far as exercised. Hence the appellants' interest would properly begin when the power ended."

This case was followed in *Flanagan v. Brown*, 70 Cal. 258, and *Chambers v. Seay*, 73 Ala. 372. See also *Gilbert v. Holmes*, 64 Ill. 549; *Barr v. Schroeder*, 32 Cal. 609; *Frank v. Roe*, 70 Id., 296.

Admitting, then, that there existed a valid contract between the State of California and Captain Mullan, it must be held, in the light of these authorities, that it was not such a one as prevented the principal from terminating it at pleasure, because of any co-existence of an interest with the power. As an agent he cannot insist upon acting in respect of these claims "when the principal has withdrawn his confidence, and no longer desires his aid." (Story on Agency, 9th ed. § 463.)

If there ever was any doubt about this, it has been set at rest by the recent decision of the Supreme Court of the United States in the case of *Missouri ex rel. Walker v. Walker* (125 U. S. 339). The facts of that case are in many respects similar to those involved in the one under consideration, and are, therefore, given in full:

March 19, 1881, the General Assembly of Missouri authorized the Fund Commissioners, if they deemed it expedient, to employ a competent agent to prosecute to final settlement before Congress and the proper Departments at Washington, certain specified claims of the State against the

Government of the United States. The agent thus employed was to prosecute the claims at his own expense, and receive as full compensation for his services such commissions on the amount collected by him as might be agreed upon between him and the Fund Commissioners, not exceeding a certain rate. The officers of the United States were authorized to pay the agent his agreed commissions, but all other payments by the United States must be made to the Treasurer of the State. Certain State officers were to deliver to him, upon the order of the Governor, necessary vouchers, documents, etc., as proofs. The Fund Commissioners appointed on November 28, 1884, John R. Walker as such agent, and agreed upon his commissions. By act of March 28, 1885, the entire act of 1881 was repealed. Walker, nevertheless, demanded a certain voucher of the State Auditor; upon his refusal, he asked for a writ of mandamus. The voucher was one allowed by the Adjutant-General after the passage of the repealing act. The question therefore, was, did the repealing act divest him of his right to have and collect the voucher? Walker's complaint was that the act impaired the obligation of the State's contract, and was, therefore, void. The State court held that his contract was "one of agency, pure and simple," and sustained the demurrer to his petition (*State v. Walker*, 88 Mo. 279).

The opinion of the Supreme Court of the United States was unanimous in its affirmation of this judgment. They held that the agency was withdrawn by the repealing Act of 1885, as no consideration had been given for it, and it was not so coupled with an interest in the subject-matter as to make it irrevocable. The definition of Chief Justice Marshall in *Hunt v. Rousmanier* was cited with approval and applied to the facts of the case. The Court says:

There is nothing whatever in the transaction, from the beginning to the end, which shows an intention on the part of the Legislature to part with any interest in or control over the claims, except to the extent of the commissions of the agent after they had been earned. Walker was given no power to compromise any claim. All he could do was to establish the claim, and, when the State was ready to pay it, take his commissions. Clearly such an agency is not irrevocable in law because of its being coupled with an interest in the thing to be collected.

In cases of this kind, if the vouchers and other evidences of debt have been actually delivered to the agent for collection, he may refuse to return them, when his agency is withdrawn, until he has been compensated for what he has already done (*Missouri v. Walker, supra*). He also has a right to be indemnified for expenses incurred in the proper prosecution of his duties before he received notice of such revocation (*United States v. Jarvis, Daveis*, 274). But that his agency may be withdrawn, so as to prevent him from taking further steps in his principal's behalf, is beyond doubt, even in cases between man and man. Persons accepting an agency or employment in pursuance of an Act of the General Assembly of a State, which neither fixes, nor contains any provision for fixing by others, a particular term of service, do so with notice of the fact that the same may be terminated at the will of the Legislature (*Missouri v. Walker, supra; State v. Davis*, 44 Mo. 129.)

A revocation of an authority, which admits of severance, will be good as to the part unexecuted, but not as to the part already executed. If the authority is not severable, and damage will happen to the agent on account of the execution of the authority *pro tanto*, the principal will not be allowed to revoke the unexecuted part, or at least not without fully indemnifying the agent. (Story on Agency, §466.)

Captain Mullan's interest is in the money to be derived from these claims when collected. His case is like Walker's in this respect, as well as in respect of a consideration. He has parted with no money or other value for the security of which the power of collecting these claims was conferred in the agreement. He has risked in the venture of his agency only his personal services and the expenses incidental to its execution. It is fair to presume that he risked this much in view of the compensation to be reaped as commissions in the event of his success, (*Chambers vs. Seay*, *supra*, citing *Simpson vs. Lamb*, 17 C. B., 603.)

But even if it be granted that Captain Mullan's contract is founded on a valuable consideration, it is not irrevocable on that account.

In the State of California, by statute, a principal may terminate any agency, except one coupled with an interest in the subject matter (Section 2356 of Civil Code of California.) See this section discussed in *Flanagan v. Brown*, 70 Cal. 258.

Therefore the decisions prior to 1872, at which time the Code was adopted, holding that agencies founded on valuable consideration cannot be revoked at pleasure by the principal, are not entitled to weight at present (see *Flanagan v. Brown*, *supra*, for comment on language of Sanderson, J., in *Brown v. Pforr*, 38 Cal., 550).

II. The whole case, then, being sifted, involves simply this: Was this a valid contract? And if so, can Governor Waterman revoke it?

It does not seem to be clear whether the Governor of California has any constitutional right to create offices or to make appointments like the one under discussion.

The Constitution of the State invests him with power only to fill vacancies, and carefully circumscribes this power (Constitution of California, Art. V, Sec. 8).

But if such right was not in the Governor, it was in the Legislature; and as these appointments have been confirmed and ratified by it, all defects or irregularities, if any existed, have been cured.

The concurrent resolutions of that body dated March 3, 1883, and March 3, 1885, recite in full the acts of the Governor in respect of these appointments, confirm and ratify them, and fix the rate of compensation. In neither case were these resolutions approved by the Governor. There is no reason to believe that such approval was needed. Each Governor had submitted in his regular message to the Legislature, reports of these claims and the employment of Captain Mullan in connection with them. Had the concurrent resolutions been approved, such approval would have been a piece of supererogation, as it would have been but an executive approval of a legislative ratification of an executive contract.

Granting that Governors Perkins and Stoneman exceeded their powers, yet their acts, as agents of the people, have been ratified by the people through their representatives.

In *Grogan vs. San Francisco* (18 Cal. 590, 609), the Court (Field, C. J.), says:

"The State may ratify the acts of her agents upon a subject within the constitutional control of the Legislature, when they exceed their powers. She may do this by legislation directly affirming the acts, or by legislation proceeding upon their assumed validity. The reason is obvious: There is no limitation as to the mode in which the State may give her assent, except that it must be by an act or resolution of her Legislature. (See also 1 Dill. Mun. Corp. 3d ed., Sec. 139; *Crawshaw v. Roxbury*, 7 Gray, 374.)

The employment of Captain Mullan, then, if not valid when these Governors made the appointment, was rendered valid from the beginning, by the action of the Legislature, that body having all powers not distributed

to others (*Ross v. Whitman*, 6 Cal. 361, 364; see also 10 Opinions, Atto'y-Gen'l, 449; Story on Agency, 9th ed., Sec. 244).

The Legislature of California possessed the power originally to authorize this appointment. Its power in this respect is complete unless restricted by the Constitution of the State (*Beals v. Amador County*, 35 Cal. 630).

I have not been able to find any such restriction. The same authority, and that alone, which created this agency can revoke it. This authority, as it seems to me, was the Legislature.

The Governor cannot undo that which the Legislature alone can do.

It is not necessary to comment at length upon the distinction between Government or State contracts, which are under the protection of the Constitution, and public officers, which may be abolished at pleasure (*in re Bulger*, *in re Merrill*, 45 Cal. 553, 557; *Newton v. Commissioners*, 100 U. S. 559), because, in this case, if the employment be considered either as an agency or an office, it may be determined at the pleasure of the Legislature. It is clear, however, that certain employments are not offices, though sometimes mistaken for such (*United States v. Maurice*, 2 Brock, 96; *United States v. Hartwell*, 6 Wall. 385; *Butler v. The Regents of the University*, 32 Wis., 124, 131; *Hall v. Wisconsin*, 103 U. S. 5).

The difference between an employment by a State Legislature, which constitutes an office, and one which amounts to a contract for work and labor, is clearly shown in *Hall v. Wisconsin*, *supra*.

Walker's case has thus been distinguished from *Hall v. Wisconsin*:

"There was in that case [*Hall v. Wisconsin*] a positive contract for employment in a particular service, for a particular term, made under the authority of law; and because it was such a contract the State could not, any more than a private individual, rescind it at will. The employment in this case, however, has no such provision. There is no agreement as to time, and the matter stands precisely as that of *Hall* would, if a statute had been passed authorizing a geological, mineralogical, and agricultural survey of the State, and he had been employed to make it and receive for his services a compensation dependent on the amount of work actually done, or the time actually employed. It would hardly have been contended that under such a contract the State could not stop the survey, and require *Hall* to quit work at any time it pleased." (*Missouri v. Walker*, *supra*, at pp. 344-5.)

It is manifest that, though the appointment of Captain Mullan was made by the Governor, and though this appointment was confirmed by the Legislature, he was not constituted a public officer. The Legislature did not intend to create an office, but to ratify an employment and prescribe the emolument attached to it. A public office embraces the ideas of tenure, duration, emolument, and duties (*United States vs. Hartwell*, 6 Wall., 385.) Captain Mullan was merely employed as an agent for a specific purpose, and it is not necessary, therefore, for him to conform to the usual requirements concerning qualification for duty imposed upon officers of the State. His relation to the State of California is similar to *Hall's* or *Butler's* relation to the State of Wisconsin, except that it lacks the element of a certain period of service.

The appointment of Captain Mullan constitutes him the agent of the State of California, and though this relation may be dissolved by the State at pleasure, it seems clear that the same power must issue the revocation that confirmed and ratified the selection of the agent.

If both the Legislature of the State and the Governor of the State may exercise this power, then Captain Mullan must serve two masters. He might quit his duties upon notice to that effect from the Governor, and be threatened for neglect of duty by the Legislature. If his appointment had to be ratified by the Legislature, it must be concluded that under the laws and constitution of the State, it holds good until revoked by the same body, or until the Governor's revocation is approved by that body.

I hold, therefore, that Captain John Mullan has been duly appointed to prosecute the claim above mentioned before this Department; that such appointment constitutes him an agent, not a public officer, of the State of California; that his authority is not coupled with an interest in the subject-matter of the agency, and is, consequently, revocable at the pleasure of the State; that this power of revocation is lodged with the Legislature, not with the Governor of California; and that, as the Legislature has taken no action in the premises, Captain Mullan must be recognized by this office as the agent and attorney of the State of California, notwithstanding the notification of Governor Waterman dated February 10, 1888.

SIGOURNEY BUTLER,
Comptroller.

EXHIBIT No. 35.

REPORT.

NEW YORK, July 27, 1862.

To his Excellency, LELAND STANFORD, Governor of California.

SIR: In accordance with the requirements of the law, I respectfully submit to you this report, showing the settlement made by the Commissioners of the California War Debt with the proper United States authorities of claims due to the State of California for expenses incurred in the suppression of Indian hostilities, under the Act of Congress of March 2, 1861:

COPY OF UNITED STATES AUDITOR'S AWARD.

What Years.	Names of Expeditions.	Amount al- lowed by California	Amount al- lowed by United States	Amount dis- allowed by United States
1854.....	Shasta Expedition	\$4,068 64	\$1,261 38	\$2,807 26
1855.....	Siskiyou Expedition	14,036 36	6,146 60	7,889 76
1855.....	Klamath and Humboldt Expedition	99,096 65	61,537 48	37,559 17
1855.....	San Bernardino Expedition	817 03	419 99	397 04
1856.....	Klamath Expedition	6,190 07 ^a	2,952 77	3,237 30
1856.....	Modoc Expedition	188,324 22	80,436 72	107,887 50
1856.....	Tulare Expedition	12,732 23	3,647 25	9,084 98
1858 & 1859.	Klamath and Humboldt Expedition	52,184 45 ^b	31,823 94	20,360 51
1859.....	Pitt River Expedition	72,156 09 ^a	41,761 54	30,394 55
Totals	\$449,005 74	\$229,987 67	\$219,618 07

^aCash.

As a part, also, of this report, I forward to the State Treasurer a book prepared by Mr. Phelan, Clerk of the Commission, duly certified by him to be a true copy of the settlement in all its details, which will show the specific amount allowed by the General Government on each voucher or claim, and which will serve as a perfect guide to the State Treasurer in disbursing the moneys to be allowed to parties presenting bonds to him for payment. You will, of course, notice the various claims have been very considerably reduced by the award; this was unavoidable, seeing that the allowances, as originally made by the State, were fixed without reference to the United States laws, and the law of Congress making the appropriation required that the settlement should be made as near as pos-

sible in strict accordance with the United States rules and regulations. (Vide Act of Congress of March 2, 1861, section 2.)

The settlement herewith reported should henceforth serve as a guide to be always consulted when future appropriations are asked for, (for the payment of expenses incurred in the suppression of Indian hostilities,) as it may be taken for certain that no higher rates of payment will be allowed by the General Government. *It is of course known to your Excellency that the late Governor, Hon. John G. Downey, undertook to declare my office, as Commissioner, vacant, and commissioned Mr. B. Nordheimer as my successor. I had been engaged in the City of Washington some three weeks or more in the performance of my duties when Mr. Nordheimer arrived there and notified me of his appointment. I refused to recognize him as my successor, and so advised Governor Downey. I also informed Mr. Atkinson, United States Third Auditor, of all the facts in the case. Subsequently, Mr. Atkinson having notified me that he would not go behind Governor Downey's commission, General Denver and myself filed with him all the original vouchers for settlement.*

The unwarrantable interference of Governor Downey has cost the State and the bondholders many months of delay. Nearly all that the Commissioners could do towards effecting a settlement had been done by General Denver and myself before the arrival of Mr. Nordheimer. We had obtained from the Secretary of War a letter to the Third Auditor, stating, substantially, that he was satisfied of the necessity existing for calling out the various expeditions in the State of California (see Act of Congress, March 2, 1861, section 24,) instructing him to audit the accounts of the State. All the work that could be done thereafter was merely clerical, which Mr. Phelan stood ready to perform. All that has been done since has been done by him; the whole matter resting in the office of the Third Auditor. The collision between the claims of Mr. Nordheimer and myself produced a delay of several weeks in filing the vouchers. If this had not occurred, I am satisfied the whole matter could have been settled before the first of November, the date of filing the vouchers, as the Government manifested a strong disposition to have the matter closed before General Denver would be required to take the field, (he having been appointed Brigadier-General in the United States service.) I will only add that the entire clerical labor connected with the settlement, which has been very heavy, has been performed by Mr. Phelan, and that his services have been of great value to the State.

Very respectfully, your obedient servant,

SAMUEL B. SMITH,

Commissioner of the California War Debt

EXHIBIT NO. 36.

CAPTAIN JOHN MULLAN'S APPOINTMENTS.

By Act approved April 1, 1870, the Surveyor-General of the State was authorized to appoint and employ an agent in Washington.

Under Act approved January 19, 1874, the above law was repealed, since which time the State has had no legally constituted agent or attorney in Washington.

Soon after assuming the duties of Chief Executive of this State, my attention was called to numerous appointments held by Captain John Mul-

lan, of San Francisco, from the Governor and State Surveyor-General to act as agent for the State in Washington.

Knowing that these unauthorized appointments, if allowed to continue, would necessarily lead to inevitable confusion, with great loss to the State, I did, on February third, sixth, and tenth, revoke all of said appointments, as is shown by the following communication:

EXECUTIVE OFFICE,
SACRAMENTO, February, 10 1888. }

Captain JOHN MULLAN, Washington, D. C.:

Referring to my telegrams of the third and sixth, respectively, and after due and careful consideration of the matters therein referred to, I am convinced that certain appointments as agent and attorney to represent the State in Washington, made to you by the Governor and State Surveyor-General, and which you endeavored to have ratified and confirmed, with a commission of 20 per cent fixed as your fee by concurrent resolution of March 3, 1883, and March 3, 1885, should be and are hereby most emphatically revoked.

This revocation applies specially to the appointment by Surveyor-General Minis, November 1, 1878, in the matter of the five per cent claim, aggregating nearly \$1,000,000.

To the appointment of Governor George C. Perkins, December 12, 1882, in the matter of "Direct Tax of August 5, 1861," aggregating over \$200,000; also that of March 7, 1882, in the matter of the "Modoc War Claim," also that of July 12, 1882, being "Claim for money expended and indebtedness assumed in repelling invasions and Indian hostilities," together with interest on the same; also claims under the provision of the Act of Congress of June 27, 1882, known as the "Rebellion Claims," aggregating \$2,938,623.

To the appointment of Governor George Stoneman, March 31, 1884, in the matter of "Claims of the State of California growing out of Indian hostilities," and in the matter of all moneys that have been paid in or may be due by the State of California on account of Indian war claims, or Indian war bonds, or coupons issued by the State for the purpose of recovering from the United States the payment of the whole of these, together with the interest due on the same, aggregating several hundred thousand dollars.

To the appointment of Surveyor-General Willey, October 24, 1883, and December 1, 1885, in the matter of "refunding certain fees" and "indemnity for certain swamp lands" therein mentioned.

The appointments above enumerated, when taken in connection with the appointments named and attempts to be confirmed in the concurrent resolutions of March 3, 1883, and March 3, 1885, are vague, indefinite, and uncertain, and that there may be no mistake I hereby revoke all appointments held by you from the Governor or State Surveyor-General, of whatever kind or nature, or named in said concurrent resolutions.

(Signed)

R. W. WATERMAN, Governor.

The entire amount involved in these claims covered by these several appointments is over four million (\$4,000,000) dollars, of which amount Mullan would secure twenty per cent, or one fifth of the same, equal to eight hundred thousand (\$800,000) dollars.

Captain John Mullan has already received seven thousand seven hundred and thirty-five dollars and thirty cents (\$7,735 30) as compensation for alleged services in the matter of the "Direct Tax"—this sum having been paid him by Governor Stoneman, on September 25, 1884, out of an appropriation made by Congress, of thirty-one thousand five hundred and eighty-three dollars and twenty-six cents (\$31,583 26), while the same was *in transitu* from the National Treasury in Washington to the State Treasury in Sacramento.

His favorite method of insidious attack on the General and Common School Fund of the State was by securing appointments from the Governor or State Surveyor-General, and into this crafty entanglement of executive appointments were woven a medley of legislative concurrent resolutions, attempting to confirm these appointments, and directing the Governor to fix his compensation, and pay him (Mullan) 20 per cent for alleged services rendered, or one fifth of the entire amount to be appropriated by Congress.

I think it clear that no executive officer of the State, in the absence of any legislation, was qualified to appoint Captain John Mullan, of San Francisco, agent and attorney in Washington; and that all such appointments were issued without authority of law, and any attempt to ratify or confirm said void acts would itself be void.

The adoption by the Legislature of concurrent resolutions March 3, 1883, and March 3, 1885, was neither wise nor prudent legislation on the part of the State; nor is it probable that the Legislature had any just conception of the financial propositions involved therein. It is hardly necessary to call your attention to the illegality of these unauthorized appointments and concurrent resolutions so skillfully drawn, and it is difficult to see how they and the Constitution can be reconciled.

The attempted donation of these large sums of money to Captain John Mullan, without consideration or service to the State, out of Congressional appropriations that rightfully belong to the people, through unauthorized appointments and concurrent resolutions, is not warranted by the Constitution as declared in Sections 15 and 22, Article IV; Section 4, Article IX, and Section 16, Article XX—he never having been legally appointed or confirmed, has filed no official bond, and has never qualified as such officer or appointee, as provided by the law of this State.

My action in revoking these appointments has been governed by a determination to save to the State the large sum of money attempted to be given to Captain John Mullan for alleged services, which are without a pretense of necessity, for the reason that the matter of these claims is one purely of legislation and for the favorable action of our Senators and members of Congress. (Message of the Governor of California, January, 1889.)

EXHIBIT No. 37.

SUBSTITUTE BILL.

[Fiftieth Congress, first session, S. 3439.]

August 14, 1888.—Mr. Stewart introduced the following bill, which was read twice, and referred to the Committee on Military Affairs:

A BILL authorizing the Secretary of War to ascertain the amount of money which has been expended and the obligations assumed by the State of California, growing out of Indian hostilities therein and upon the borders thereof, not heretofore reimbursed by the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War, through the Board of War Claim Examiners, appointed under section two of the Act entitled "An Act for the benefit of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas, and Nevada, and the Territory of Washington, and Nevada when a Territory," approved August fourth, eighteen hundred and eighty-six, be and he is hereby authorized and directed to examine all vouchers, accounts, papers, and evidence which heretofore have been or which hereafter may be submitted to him in support of the Indian war claims and Indian war obligations of the State of California, and to ascertain the amount of money actually expended and obligations incurred by said State, growing out of Indian hostilities therein and upon the borders thereof, and which have not heretofore been reimbursed by the United States.

The Secretary of War shall report to Congress the amount of money which may be thus ascertained to have been actually paid and assumed by the State of California on account of the matters above enumerated.

And the Secretary of War shall report the circumstances and exigencies under which, and the authority by which, such expenditures were made,

and what payments have been made on account thereof by the United States; and the money necessary to enable the Secretary of War to comply with the provisions of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated. ("Congressional Record," February 14, 1889, page 1905.)

EXHIBIT No. 38.

EXECUTIVE DEPARTMENT, STATE OF CALIFORNIA,
SACRAMENTO, February 18, 1889.

Hon. C. S. FAIRCHILD, Secretary of the Treasury, Washington, D. C.:

SIR: On February 10, 1888, I revoked all appointments held by Captain John Mullan as "attorney and agent" in Washington, and as a matter of courtesy notified you by telegraph of the fact. On February 13, 1888, H. S. Thompson, acting Secretary, acknowledged receipt and caused the same to be "referred to the honorable First and Second Controllers for their information." On February 21, 1888, I was graciously informed by John S. Williams, Third Auditor, as follows:

I now have the honor to inclose herewith a copy of Captain John Mullan's authority to act as agent, etc., and also a copy of the Senate concurrent resolution adopted March 3, 1885, showing the subsequent ratification by the Legislature of his appointment and his commission, for your consideration.

On March 6, 1888, I answered this note, and called your attention to the fact that the subject-matter embraced in the papers referred to were but a fraction of the claims represented by the appointments claimed to be held by Mullan, including which were the five per cent claim, the direct tax claim, and claims under the provisions of the Act of Congress of June 27, 1882, the same being cited in the concurrent resolution adopted March 3, 1883. To my letter of March 6, 1888, I have never had a response.

It was apparent to me then, as it is evident now, that yourself and Captain John Mullan have conspired together against the promotion of the best interests of this State, and for the purpose of defeating, if possible, my authority in all these matters, to the end that Mullan might obtain possession of any drafts representing moneys appropriated by Congress for the benefit of this State, made payable to me as Governor of the State, and attempt in the garb of a pretended agent to levy a tribute of twenty per cent out of the same as his compensation for pretended "services rendered."

Acting upon this determination, you did, some time after October 18, 1888, and against my written instructions, deliver to Mullan, as "agent and attorney," to convey to Sacramento, two drafts payable to me representing \$11,723 64. This was entirely unnecessary, as the mails and express were at your command; but the extraordinary part of this questionable transaction was the fact that you permitted this money to be divided into two portions, one fifth representing the amount claimed by Mullan, and four fifths, as you assume, representing the amount due the State. Your manipulation of these drafts in favor of Mullan, although intended to give Mullan the benefit of "collecting" this money for the State, and put him on good fighting ground against me, avail him nothing at the present time, nor will it in the future. On January eighteenth Mullan, on my demand, and as a private citizen, or messenger, surrendered the drafts into my custody, and the State will receive the whole amount.

To sustain this peculiar and unprecedented proceeding, and as an answer to my letter dated March 6, 1888, above referred to, I am now informed, through Washington press dispatches of February 9, 1889, that "Secretary Fairchild referred the matter to Second Controller Butler, who finished an elaborate review of the case, in which he decides in Captain Mullan's favor." This decision is printed with prominent headlines, such as "Mullan Recognized," "Waterman's Action," etc., and is put forth prominently at this time to discredit my action in removing Mullan, and to throw dust in the eyes of our legislators who are not informed as to the true facts of the case.

In defense of my prerogative in removing Mullan, and for the information of our Legislature, now in session, I am moved to notice this "elaborate review," which decides that "Captain John Mullan must be recognized by this office (the Treasury Department) as the agent and attorney of the State of California, notwithstanding the notification of Governor Waterman, dated February 10, 1888."

It is unfortunate for Second Controller Butler that, in his zeal to aid Captain John Mullan in breaking into the money chest of this State, he has entered the arena against me, without being fully equipped as to the facts or informed as to the law, his information being fragmentary and elliptical in its character. Laying aside the proposition that he, a sub-officer of the Treasury Department, undertakes to decide judicially as to the validity of an appointment and a concurrent resolution adopted by our State Legislature, as against the plain provision of our Constitution, and pretend to advise me as to my duties in the premises, he assumes for his groundwork of attack a false assumption of facts, that in truth do not exist. He lays down as the keystone of his armament for this "elaborate review," which is called a "decision," these three propositions: "First—Mr. Butler shows that Captain Mullan was originally appointed by Governor Perkins on July 12, 1882, and that the Governor's action was confirmed by the Legislature in the following March. Second—Governor Stoneman, who succeeded Mr. Perkins, appointed Captain Mullan, and the Legislature a second time confirmed the appointment at its next session. Third—The appointment of Captain Mullan, if not valid when these Governors made the appointments, was rendered valid from the beginning by the action of the Legislature."

In reply I will say: *First*—On July 12, 1882, Governor Perkins did "authorize Captain John Mullan to represent the State to recover money expended in suppressing Indian hostilities," etc., but this appointment was never in fact ratified or confirmed by any law or concurrent resolution of "the Legislature in the following March," as an honest and intelligent comparison of the documents will prove.

Second—Governor Stoneman in his appointment of Mullan, dated March 31, 1884, did not embrace the same matters as are included in Governor Perkins' appointment, cited as of July 12, 1882. I would here say in justice to Governor Stoneman, that no record of the issuance of this peculiar appointment, claimed to be held by Mullan, appears in this office.

Third—His third proposition it is not necessary to notice, except to say that all the appointments issued to Mullan were without authority of law, and any attempt to ratify or confirm said void acts would itself be void. Out of the several appointments claimed to be held by Captain John Mullan from the Governor of this State, as before mentioned, the honorable Second Controller selected but one, that of Governor Perkins, July 12, 1882 (thinking it was double-barreled), on which to display his intellectual capacity and profound legal training. He has served your purpose

well, and as a pawn in the hands of Captain John Mullan—a piece always accounted insignificant in itself—Mr. Butler has proved a success.

In view of the facts as above stated, it is not necessary to further review this “elaborate” decision, which, in Mr. Butler’s case, was a clear waste of time, midnight oil, and brain work, at the expense of the Government.

Very respectfully,

R. W. WATERMAN, Governor.

—[San Francisco Chronicle, February 19, 1889.]

EXHIBIT No. 39.

[Should also be Exhibit No. 32 “O.”]

HOUSE OF REPRESENTATIVES UNITED STATES,)
WASHINGTON, D. C., February 17, 1889.)

Captain JOHN MULLAN, Sacramento:

MY DEAR SIR: Referring to your request, recent date, I take pleasure in testifying to the fidelity with which you have served the State of California, as agent, in looking after the recovery of moneys due from the United States.

My observation and personal knowledge of the situation leads me to the belief that had it not been for the pains taken and energy displayed by you in presenting these matters in proper form, the reimbursements already made would not have obtained to the State.

Very respectfully,

THOS. L. THOMPSON.

EXHIBIT No. 40.

[Should also be Exhibit No. 32 “P.”]

SACRAMENTO, CALIFORNIA, February 25, 1889.

Captain JOHN MULLAN, Sacramento, California:

MY DEAR SIR: In reply to your letter of recent date, received by me at my home in Sonoma County only the day I left there for Sacramento, I beg to say that I take great pleasure in bearing witness to the fact that while I was in Congress from this State, you were ever diligent and faithful in trying to have adjusted by the United States such unpaid claims of this State as you then represented as agent and attorney for California; and whatever this State may eventually receive from these claims will, in my opinion, be largely due to your active and zealous efforts in that behalf.

Yours very truly,

J. K. LUTTRELL,
Ex-Member of Congress.

AT THE CAPITOL, SACRAMENTO, }
CALIFORNIA, March 1, 1889. }

To the Special Joint Committee appointed under Assembly Concurrent Resolution No. 5, adopted by the Legislature of California, January 25, 1889:

SIRS: Under leave by me asked (see page fifteen of my statement, part No. two) to file such other letters as I might deem proper or necessary, as parts of said Exhibit No. 32, referred to in said page fifteen, I now submit herewith a telegram by me this day received from Hon. George Hearst, United States Senator, dated February 28, 1889, Washington, D. C., and I attach same hereto, make part hereof, and mark Exhibit No. 41 (and also, Exhibit No. 32 Q).

Second—Also, telegram from Washington, D. C., of February 27, 1889, setting forth the passage by the Senate of the United States, on February 27, 1889, of a resolution submitted by Senator Stewart, authorizing the Hon. Secretary of War to fully examine into and report to Congress upon the entire subject-matter of the present unpaid Rebellion war claims of the States of California, (Oregon, and Nevada,) etc.

This resolution of Senator Stewart relates to the same unpaid California Rebellion war claims described by me on pages forty-nine to fifty-three, Part No. 1, and also on pages nine to fifteen, Part No. 2, and is identical with Senator Stewart's bill, to wit: Senate Bill No. 3420, printed as my Exhibit No. 27, page twenty, Part No. 2 of this statement.

This last action by the Senate on this measure is in harmony with suggestions made by me to Senator Stewart, after my arrival in Sacramento, and is also in harmony with the request of this Legislature, as expressed in Assembly Concurrent Resolution No. 10, introduced by Hon. W. P. Mathews, and *unanimously* adopted by the Assembly on February 14, 1889, and which on February 21, 1889, upon motion of Senator Britt—Chairman of the Committee on Federal Relations, by which it was considered and finally recommended—it was *unanimously* adopted by the Senate.

Wherefore, I now move your honorable committee that the foregoing and the exhibits hereto attached may be printed as portion of Part No. 3 of this statement.

Respectfully,

JOHN MULLAN.

STATE OF CALIFORNIA, }
County of Sacramento. }

John Mullan, on first being duly sworn, says that he has read the foregoing statements and all the exhibits thereto attached, made parts thereof, and knows the contents of all of the same; that the same are true, except as to those matters therein stated upon information and belief; and as to those matters, he believes the same to be true.

JOHN MULLAN.

Subscribed and sworn to before me, this first day of March, 1889.

MATT. F. JOHNSON, Notary Public.

EXHIBIT NO. 41.

[Also Exhibit No. 32 "Q."]

[Telegram.]

WASHINGTON, D. C., February 28, 1889.

Captain JOHN MULLAN, Sacramento, California:

DEAR SIR: It gives me great pleasure to bear witness to your persistent diligence, fidelity, and usefulness in prosecuting and urging the settlement between the United States and the State of California of all unpaid claims due California.

In attending to all the details necessary for the proper presentation and prosecution of said claims, you have performed a task which could not be expected from a Representative in Congress, and which would be impossible for him to perform.

Should California recover any of these claims, her citizens will appreciate your efforts.

Very respectfully,

(Signed)

GEORGE HEARST.

EXHIBIT NO 42.

[Telegram.]

PACIFIC COAST WAR CLAIMS CONSIDERED.

War Claims—A Resolution of Interest to the Pacific Coast.

WASHINGTON, February 27.—Senator Stewart to-day secured the passage through the Senate of a resolution in regard to the examination of California, Oregon, and Nevada war claims. This resolution is in substance the bill which he introduced at the last session of Congress. It becoming evident that the bill would not be reached in the House, Senator Stewart consulted the War Department officials to ascertain if the examination might not be had under a resolution of the Senate.

Upon being assured that it could, he had passed by the Senate to-day a resolution which provides that the Secretary of War, through the Board of War Claims Examiners, is authorized and directed to examine all accounts, papers, evidence which heretofore have been or which hereafter may be submitted to him in support of the war claims of the States of California, Oregon, and Nevada, growing out of the war of the Rebellion, and in suppressing Indian war hostilities and disturbances during the war of the Rebellion, and in guarding the overland mails and emigrant routes during and subsequently to the war, and to ascertain and state what amount of money each of the States of Nevada, California, and Oregon actually expended for military purposes in aid of the Government.

The Secretary of War is also directed to ascertain what amount of interest has been paid by each of the States on account of these incurred obligations. The bill provides also that the Secretary of War is to report to the Senate his findings in the matter. The report of the Board will be an official ascertainment of the facts, and the only question for Congress to determine will be whether they will pay the money disbursed by the Pacific States at the request of the President and Secretary of War, or whether they will repudiate the same.

The difficulty heretofore has been to ascertain the exact expenditures and have them authenticated. That difficulty is remedied by this resolution. Senator Stewart prepared a report at the last session on these claims, giving the circumstances under which these expenditures were made. The interest of California in this claim amounts to about \$3,000,000, and the claims of Oregon and Nevada are about \$300,000 each.—[San Francisco Chronicle, February 28, 1889.]

PART NO. 4.

CORRESPONDENCE

BETWEEN THE OFFICERS OF THE

EXECUTIVE DEPARTMENT OF CALIFORNIA

RELATIVE TO THE

UNPAID CLAIMS OF THE STATE OF CALIFORNIA

AGAINST THE

UNITED STATES

And the SPECIAL JOINT COMMITTEE appointed under ASSEMBLY CONCURRENT RESOLUTION No. 5, adopted January 26, 1889.



SACRAMENTO:

STATE OFFICE, : : : J. D. YOUNG, SUPT. STATE PRINTING.

1889.

FORM OF CIRCULAR LETTER ADDRESSED TO EACH OF THE
STATE EXECUTIVE OFFICERS OF CALIFORNIA, ETC.

SACRAMENTO, CALIFORNIA, February 8, 1889.

SIR: The Special Joint Committee appointed by the Legislature of this State under its Assembly Concurrent Resolution No. 5, adopted January 25, 1889, respectfully requests that you may inform them whether there are at this time any correspondence or records or other data in your office that show what steps or efforts, if any, were taken by the Senators and Representatives in Congress from California, prior to the dates hereinafter recited, to secure through Congress or before any other appropriate Departments of the Government of the United States a recognition and adjustment by the United States of the several unpaid claims or demands of the State of California against the United States alleged to be due this State in the following named cases, to wit:

First—The efforts by them so made prior to November 1, 1878, to have the United States pay to the State of California five per cent of the net proceeds of the cash sales of all public lands made by the United States in this State.

Second—The efforts by them so made prior to March 7, 1882, to have the United States reimburse the State of California all expenses and costs incurred by her for the "common defense" during the suppression of the Modoc Indian hostilities in this State in 1871 and 1872.

Third—The efforts by them so made prior to July 12, 1882, to have the United States reimburse the State of California all expenses and costs incurred by her for the "common defense" during the suppression of Indian hostilities in this State other than Modoc Indian hostilities arising between March 2, 1861, and June 27, 1882, and not provided for by Congress prior to June 27, 1882.

Fourth—The efforts by them so made prior to December 12, 1882, to have the United States reimburse the State of California all the "Direct War Tax," or any portion thereof, paid by this State to the United States under the Act of Congress approved August 5, 1861, when levying for war purposes a tax of \$20,000,000 upon the several States of the Union and organized Territories, etc., commonly known as the "Direct War Tax," Act of Congress, August 5, 1861.

Fifth—The efforts by them so made prior to October 24, 1883, to have the United States reimburse the State of California all moneys by her improperly paid to the United States as "fees" upon the several selections of lands made by and not approved to this State, but which selections were subsequently canceled by the United States.

Sixth—The efforts by them so made prior to March 31, 1884, to have the United States reimburse the State of California all expenses and costs incurred by her for the "common defense" in the suppression of Indian and other hostilities in this State and in adjoining States and Territories, or upon the borders of either thereof, and for interest paid thereon not reimbursed to this State prior to March 31, 1884, and of a character other than that of either of those cases hereinbefore named.

Seventh—The efforts by them so made prior to December 1, 1885, to have the United States indemnify the State of California for losses by her, sustained by virtue of an improper disposition by the United States of any lands granted to this State September 28, 1850, by Congress, or confirmed to this State July 23, 1866, by Congress.

Eighth—If any such correspondence, or other data or records in relation to any of the foregoing matters, and either prior or subsequent to the dates as hereinbefore stated in each of said cases, are now of record in your office, then please inform this committee of the dates thereof and names subscribed thereto, and of the places where written, and of the name and description of the books, volumes, or other records in your office in which such information is kept and may be found, and also the character of said correspondence or information, if any, in each of the aforesaid cases.

This committee asks that the foregoing request may have your immediate attention and very early reply.

Respectfully,

[Signed]

W. P. MATHEWS,
Chairman.

EXECUTIVE DEPARTMENT,)
STATE OF CALIFORNIA,)
SACRAMENTO, February 18, 1889. }

Hon. W. P. MATHEWS, Chairman Committee, etc., Assembly Chamber:

DEAR SIR: I am in receipt of your communication propounding certain questions and interrogations as to "efforts of our Congressmen" as to certain claims therein mentioned, and beg leave to reply as follows:

As to the questions propounded in the first 7 (seven) subdivisions of your communication I will remark that they can only be answered by a critical examination of the Journals of the United States Senate and House of Representatives—the reports of the Committee of the two Houses—and an examination of the files of the "Congressional Globe" and the later official organ of Congress, the "Congressional Record." Further, I would respectfully inform you that there is no law that requires a United States Senator or Congressman to communicate with this office as to pending legislation affecting the interests of this State. I do find in our statutes of 1858, that our Legislature on March 11, 1858, adopted Concurrent Resolution asking "Congress a donation of 5 (five) per cent upon the sale of public lands for school purposes."

In answer to question 8 (eight) I would say that there is some correspondence in this office directed to preceding Governors from John Mullan, claiming to be State Agent in Washington, but which is unimportant in its character. I find also in the office a book of five hundred and eighty pages, entitled "Mullan's California State Claims Reports," from November 1, 1878, to November 1, 1886. I find in looking through the pages of this book, which is made up of exhibits to five per cent claim, page sixty to one hundred and twenty; exhibits to direct tax, page one hundred and twenty-one to two hundred and eighty; exhibits to "Indian war claim," page two hundred and eighty-nine to four hundred and sixty-four; exhibits to rebellion claim, page four hundred and sixty-five to four hundred and eighty-six; "exhibits of claim of interest," page four hundred and eighty-seven to five hundred and seventy-two. These exhibits are made up of proceedings in Congress, reports of committees, copies of bills, tables prepared by heads of departments, joint resolutions of the General Assem-

bly of Iowa, opinion of Supreme Court of the United States in case of State of Iowa and State of Illinois, letters from Secretary of the Treasury, letter from Delos R. Ashley, State Treasurer; minority report on direct tax, copies of bills relating to Georgia, and the defense of her frontiers against Indians from 1795 to 1818; committee reports on these bills, concurrent resolutions of our Legislature, extracts from "Congressional Record," reports of war taxes, speech of Price, of Wisconsin; direct tax in State of Georgia, report of Secretary of Treasurer on direct tax, thirty-two pages; exhibits Modoc war claim, report of joint committee of Legislature in 1872 on Indiana war bonds, memorials on Indiana matters, copies of Acts of Congress, letters from Secretary of War, letters from Third Auditor, Controller's report on Indian war bonds, statement of Indian war bonds by Mullan, report of the Committee on Indian affairs to accompany Bill 9729, twenty-five pages; speech of Hon. I. N. Dolph and others on Indian depredation claims, thirty-four pages; report of debate by Edmunds and Allison on Indian claims, letters of Attorney-General Brewster to Folger, Secretary of the Treasurer: "reports of committees on advances made to United States by Maryland and Virginia," reports of debate, First Session, Thirty-fifth Congress, May 31, 1858, between Iverson, Benjamin, Hamlin, Hunter, and Toombs of Georgia, and Fessenden; report on Relief of the First National Bank of Newton, Mass. I notice that in this book occasionally appears the name of John Mullan, and for further information on that point I would respectfully refer you to the book itself. There is an office book of record that contains memorandum of the appointment by Governor George C. Perkins of Mullan in two cases. The correspondence I have referred to I will collect together and put in shape so that you can examine it, on Tuesday afternoon, February 19, 1889, at 4 o'clock P. M. I presume this will be more satisfactory to you than giving you the character of said correspondence in writing.

Very truly your obedient servant,

R. W. WATERMAN,
Governor.

SACRAMENTO, February 8, 1889.

To Hon. W. P. MATHEWS, Chairman Special Joint Committee, State Capitol:

SIR: In reply to yours of this date, I would inform your honorable body, through you, that there are no correspondence, records, or other data that show any step or efforts were taken by the Senators and Representatives in Congress from California prior to the dates recited in your communication to secure through Congress, or before any other appropriate departments of the Government of the United States, a recognition and adjustment by the United States of the several unpaid claims or demands of the State of California against the United States, alleged to be due this State.

Respectfully,

W. C. HENDRICKS,
Secretary of State.

SACRAMENTO, February 11, 1889.

Hon. W. P. MATHEWS, Chairman Special Joint Committee of the Legislature:

SIR: I have the honor to state, in reply to your letter of inquiry dated the eighth instant, that this office does not contain, so far as I am aware or can ascertain, any correspondence or other records indicating any action

taken by Senators or Representatives in Congress from this State, to secure from the United States the sums alleged to be due the State of California in the matters recited in said letter of February 9, 1889.

Respectfully,

JOHN P. DUNN, Controller.

CALIFORNIA STATE LIBRARY,)
SACRAMENTO, February 12, 1889. }

Hon. W. P. MATHEWS, Chairman of the Special Joint Committee appointed by the Legislature under and by virtue of Assembly Concurrent Resolution Number Five, adopted January 25, 1889:

DEAR SIR: In reply to your letter of inquiry, dated February 7, 1889, permit me to say that there are no correspondence or records, so far as I am aware or can ascertain, showing any action on the part of the members of Congress in this State, relative to the matter embraced within your letter of inquiry. The only information I have relating to the subject of your letter is the report of Captain John Mullan, dated November 1, 1886, to Honorable George Stoneman, Governor of California, and can be found in volume eight, appendix to journals of Senate and Assembly, twenty-seventh session.

Yours truly,

TALBOT H. WALLIS,
State Librarian.

OFFICE OF STATE SUPERINTENDENT OF PUBLIC INSTRUCTION,)
SACRAMENTO, CAL., February 11, 1889. }

Hon. W. P. MATHEWS, Chairman Special Joint Committee appointed by the Legislature of this State under its Assembly Concurrent Resolution Number Five:

DEAR SIR: Your communication of February eighth, asking for such information as might be of record or on file in this office, concerning the various points of inquiry embraced in your communication, has been received and its contents carefully noted. In reply, I beg to state that there is not, to my knowledge, any records in this office or any data on file concerning the various matters referred to in your communication.

Very respectfully, your obedient servant,

IRA G. HOITT,
Superintendent Public Instruction.

OFFICE SURVEYOR-GENERAL,)
SACRAMENTO, February 11, 1889. }

Hon. W. P. MATHEWS, Chairman:

SIR: Referring to your letter of the eighth instant, making certain inquiries, I have to state that I have made an examination of records of this office and I am unable to find any correspondence prior to November 1, 1878, relative to making an effort to have the United States pay to this State 5 per cent of the net proceeds of the cash sales of all the public lands made by the United States in this State, nor do I find any record of any correspondence relative to having the United States refund all expenses and

costs incurred by the State for the "common defense" in any of the cases referred to in your letter.

All that I have been able to find is the appointment of Capt. John Mullan by Wm. Minis, Surveyor-General, November 1, 1878, Letter Book No. 5, page 526, and the appointment of Capt. John Mullan by H. I. Willey, Surveyor-General, October 24, 1883, Letter Book No. 12, pages 422 and 423. Both of the above letters dated at Sacramento, California.

Very respectfully,

THEO. REICHERT,
Surveyor-General.

STATE OF CALIFORNIA,)
ADJUTANT-GENERAL'S OFFICE,)
SACRAMENTO, February 8, 1889.)

Hon. W. P. MATHEWS, *Chairman of Special Joint Committee on Claims, California Legislature:*

SIR: I have the honor to acknowledge the receipt of your communication dated February eighth, asking if this office contains certain papers bearing upon claims against the Government of the United States in favor of this State.

In reply I will say that all the papers appertaining to the early Indian wars formerly on file in this office, and which should be here now, were sent by my predecessor to Captain John Mullan, Washington, D. C., and that the only records now here are contained in a volume entitled "Reports to Hon. George Stoneman, Governor of California, on certain claims of the State of California against the United States," by John Mullan, agent and counsel for the State of California.

Very respectfully, your obedient servant,

R. H. ORTON,
Adjutant-General of California.

TREASURY DEPARTMENT, SACRAMENTO,)
February 9, 1889.)

Hon. WILLIAM P. MATHEWS, *Chairman Special Joint Committee of the Legislature:*

SIR: In reply to your communication addressed to this office under date of February eighth, instant, asking for information "whether there are at this date or time any correspondence, or records, or other data in your office that show what steps or efforts, if any, were taken by the Senators and Representatives in Congress from California, prior to the dates hereinafter recited, to secure through Congress, or before any other appropriate Departments of the Government of the United States, a recognition and adjustment by the United States of the several unpaid claims or demands of the State of California against the United States, alleged to be due this State," the same being fully set forth and embraced within the eight subdivisions of your communication, I have this to reply: That I regret to state that there is nothing in this office, of record or otherwise, that would enable me to render your honorable committee the desired information.

I am, very truly yours,

ADAM HEROLD,
Treasurer of State.

By I. DANIELWITZ, Deputy.

IN THE MATTER

OF

ASSEMBLY BILL NO. 505.

Being an Act entitled an Act to enfranchise the Women Citizens of the
State, and prescribing their qualifications as Electors.



ARGUMENT.

To the honorable J. H. SEAWELL, Chairman of the Judiciary Committee of the Assembly:

I have the honor to submit, for the consideration of the members of your committee and other members of your honorable body, the following points bearing upon the constitutionality of Assembly Bill No. 505, regarding which, you have informed me, your committee are in doubt:

I.

The question of the constitutional right of the Legislature to enfranchise women by statutory law is one of exceeding interest, and involves, perhaps, one of the most delicate points of constitutional law, which still remains (so far as my reading or knowledge extends) *res integra*. For these reasons I do not for a moment presume that what I have to offer will be conclusive in settling this point; but from the interpretation of statutes, where a conflict with the organic law of the State has been claimed upon provisions any way similar to the question at issue in this case, I am disposed to claim that the Legislature has the power to enfranchise the women of this State by a statute under the provisions of the Constitution of California, except women who belong to either of those classes interdicted by the concluding paragraph of section one of article two of the Constitution:

ARTICLE II.

SECTION 1. Every native male citizen of the United States, every male person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct thirty days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; *provided*, no native of China, no idiot, no insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privileges of an elector in this State.

The concluding clause of said section explicitly designates the class or classes who "shall never exercise the privileges of an elector in this State."

Obviously, the Legislature could not exclude any male citizen or person mentioned in the first part of said section from the right, guaranteed to to them therein, to vote, except by an amendment to the Constitution: nor could the Legislature extend the right of suffrage to any of those expressly prohibited by the concluding clause in said section, without also amending the organic law.

And now let us inquire if the Legislature has the power to enfranchise women who do not belong to the interdicted classes.

The rule by which the constitutionality of a legislative enactment is to be determined is: "Does the Constitution of the State prohibit it?" Or, in other words, we look in the Constitution of the United States for grants of legislative power, but in the Constitution of a State to ascertain if any

limitations have been imposed upon the complete power with which the Legislative Department of the State was vested in its creation.

"Congress can pass no laws but such as the Constitution authorizes, either expressly or by clear implication; while the State Legislature has jurisdiction of all subjects on which its legislation is not prohibited."

Cooley on Constitutional Limitations, pp. 173, 174.

That the Legislature has power to enact any measure not actually prohibited by the State Constitution (saving always the National Constitution also) is a principle of law so well established, and so fully recognized in the interpretation of constitutional power, as to make it seem almost superfluous to multiply authorities, but the importance of the subject justifies a somewhat extended review of constitutional constructions and decisions.

Story on the Constitution, section five hundred and thirty-four, in contrasting the power of the judicial and legislative branches of the Government, says:

"It" (the judicial) "can do nothing for itself. It must do everything for others. It must obey the laws; and if it corruptly administers them, it is subjected to the power of impeachment. On the other hand, the legislative power, except in the few cases of constitutional prohibition, is unlimited."

To the same point, in *People vs. Draper*, 15 N. Y., 543, the Court say:

"Plenary power in the Legislature, for all purposes of civil government, is the rule. A prohibition to exercise a particular power is an exception. In inquiring, therefore, whether a given statute is constitutional, it is for those who question its validity to show that it is forbidden." Not that every possible limitation upon legislative power must be positively expressed, for there are many implied limitations, but nearly every case in which legislative bodies have been held to have transcended their constitutional authority in passing laws which were not actually prohibited by the Constitution, have been where such measures were a restriction upon the vested rights of citizens, rarely if ever in the extension or enlargement of rights or privileges.

Benson vs. Mayor, etc., of N. Y., 10 Barb. 244.

Cooley on Constitutional Limitations, Section 4, Chapter 7.

Jackson vs. Wright, 4 John. 79.

Englishbee vs. Helmuth, 3 Conn. 295.

Goshen vs. Stonington, 4 Conn. 225.

Purcell vs. Smith, 21 Iowa, 540.

Implied restrictions upon legislative power seem to be very cautiously determined in judicial decisions, and Cooley on Constitutional Limitations, 129, would seem to imply that all limitations should be expressed. He says, and the same language was used in *State ex rel. Garnes vs. McCann*, 21 Ohio Statutes, 211 and 212:

"Where the power which is exercised is legislative in its character, the Courts can enforce only those limitations which the Constitution imposes; not those implied restrictions which, resting in theory only, the people have been satisfied to leave to the judgment, patriotism, and sense of justice of their representatives."

Terrett vs. Taylor, 3 Cranch. 43.

4 Michigan 248.

20 Wend. 382.

But independently of these restraints, express or implied, every subject within the scope of civil government is liable to be dealt with by the Legislature.

Sedgwick, on the construction of constitutional law, speaking of the implied or expressed inhibitions against statutory enactments, which have led to their being decided unconstitutional, says:

"It is difficult precisely to classify these objectionable laws, but they will be found generally under the three heads:

"*First*—Where the Legislature has, by a special Act, sought to dispense with a general law in favor of an individual.

"*Second*—Where the Act is one of legislation for a particular case.

"*Third*—Where the Act is in its nature judicial."

To declare an Act unconstitutional, therefore, it must be shown that it is an infringement upon recognized rights by clear implication, or that it is absolutely prohibited. Thus we can show that an Act to enfranchise women is neither to destroy vested rights nor to extend privileges to a proscribed or inhibited class.

Constitution of California, Section 1, Article 2.

In the case of the *People vs. Board of Supervisors, etc.*, 27 Barb. 593, the Court, in an able and exhaustive review of constitutional limitations upon legislative enactments, say:

"The power of the Legislature is not derived from or conferred by the Constitution. * * The power is the sovereign power of the people, and in a political and judicial sense it is omnipotent and irresponsible, except when it is expressly restrained by the organic instrument. Whatever the people might do, the Courts cannot prevent their representatives from doing, unless the people have positively and expressly forbidden it. The Constitution (of N. Y.) is to be resorted to, therefore, not to see what powers are conferred upon the Legislature, but what are withheld; not how they are authorized to act, but in what respects they are restrained, or forbidden to exercise power. * * There is a wide distinction between such an instrument and a grant of limited power like the Constitution of the United States. The same strict construction which demands an express grant of a doubtful power in the latter is bound to furnish an explicit restriction in the former."

See *People vs. Gallagher*, 4 Michigan, pages 249, 250, and 251, and cases cited.

In 5 Michigan, *Sears vs. Cotrell*, page 257, the Court say:

"The purpose and object of a State Constitution are not to make specific grants of power, but to limit that power where it would otherwise be general or unlimited. * * * With the Constitution of the United States the case is directly the reverse. * * * In the one case, therefore, the inquiry is, has the power in question been granted? In the other, has it been prohibited?"

In 17 California, page 547, in case of *The People ex rel. Smith*, the same universally recognized rule of interpretation of Constitutions is given.

Chancellor Kent says, Com. 1 vol., 448:

"The principle in the English Government, that Parliament is omnipotent, does not prevail in the United States. Though, if there be no constitutional objection to a statute, it is with us as absolute and uncon-

trollable as laws flowing from the sovereign power under any other form of government." * * *

Nor has this point remained *res integra*. In our own State, *ex rel. Smith vs. Judge*, Twelfth Dist. Court, 17 Cal., 559, the Court say:

"The Legislature can pass such laws as it may judge expedient, subject only to the prohibitions of the Constitution."

Again, in *Ross vs. Whitman*, 6 Cal., 365, the Court say:

"The power of the Legislature is supreme, except where it is expressly restricted." 45 Cal., 559.

Thus the same rule of construction has been reiterated again and again by our own Supreme Court.

II.

And, now, let us inquire in what manner the words "male citizens," in Section 1 of Article II of the Constitution, *supra*, can affect legislation enfranchising women citizens.

It may be urged that the oft-quoted maxim, *expressio unius est exclusio alterius*, will apply herein, and that women are thereby excluded; but the context shows the fallacy of such an application, for the concluding clause excludes women from those classes absolutely prohibited from voting, and the maxim, if applicable at all in the case, is applicable to that clause alone.

Again, if "the express mention of one thing implies the exclusion of those not mentioned" should be applied in the interpretation of Constitutions, it would not only lead to a degree of conservative construction, never contemplated by the framers of the organic law, but to an entire overthrow of well established rules by which the construction of constitutions and statutes has been distinguished. This position cannot be maintained upon any showing of *res adjudicata*. On the contrary, there are many decisions in which this claim has been entirely rejected.

Ex parte Lynch, 16 S. C., 33.

State vs. Tate, 22 Iowa, 141.

People vs. Highway Com'rs, 15 Mich., 347.

People vs. Ingham Co., 20 Mich., 95.

Walcott vs. People, 17 Mich., 68.

There can be no plainer exposition of this rule than that given in *Purcell vs. Smith*, 21 Iowa, Article I, Section 22, of the Constitution of Iowa: Provides that *resident foreigners* shall enjoy the same rights in respect to property as native born citizens. The Legislature of that State passed a statute conferring the same property rights upon *non-resident foreigners*, and the cause went to the Supreme Court on this claim that the "expression of one excludes all others."

The Court say: "The Constitution having provided that resident foreigners shall enjoy certain rights, it becomes a limit or prohibition upon the legislative power to deprive such foreigners of those rights, but it is not a restriction upon the Legislature as to the granting of like rights or privileges to other foreigners than those named."

Now I ask you gentlemen, as lawyers, if you are prepared to entertain the thought that this rule of wise construction does not apply to Assembly Bill 505? Let the words "male citizens" be substituted for those of "resident foreigners," and those of "female," or "women citizens," for those of "non-resident foreigners," and you will see that your objection that "this bill is unconstitutional" has been overruled by an able decision already rendered.

Again: The absurdity of this proposition becomes more and more apparent as we investigate the provisions of the Constitution further, and particularly those pertaining to suffrage. He who contends for the application of this maxim must, to be consistent, admit that the whole subject is settled by the Constitution, and nothing is left for the Legislature, except it be to regulate and prescribe the manner in which votes are to be cast. But according to the familiar rule which requires all parts of an instrument to be construed together, and such a construction given as will tend to harmonize and give a meaning to every part, what is to be done with Section 24, of Article I, of the Constitution, which reads: "No property, qualification shall ever be required for any person to vote or hold office," clearly indicating, as it does, that the Constitution does not settle the qualifications of an elector absolutely; for applying the same maxim, we must acknowledge that the Legislature can prescribe other qualifications for electors than that of a property qualification.

Again: Section 1, Article II, Constitution of California, speaks of voting as a "right," a "privilege," and in Section 21 of Article I the Constitution says: "No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen or class of citizens be granted privileges or immunities, which, upon the same terms, shall not be granted to all citizens." No one disputes that women are "citizens," or that the right to vote is a "privilege," extended in this instance specially to certain male citizens, therefore the Legislature has a special power conferred upon it by the Constitution to alter, revoke, or repeal any laws pertaining to suffrage without further aid from the Constitution.

Minor vs. Happersett, 21 Wall. 162.

But it is useless to pursue this subject farther, as I am convinced that every lawyer who investigates this question of the power of the Legislature to extend the "privilege of an elector" to women, will admit it is without doubt constitutional. It may be of interest to know that several States have passed laws allowing women to vote upon school matters where the Constitutions thereof contain the same special qualifications for electors that the Constitution of California does. We refer you to the general laws of Kansas, page fifty-eight, where the right of school suffrage is conferred upon women, although the State Constitution has the word "male" as one of the qualifications for suffrage.

In the general laws of Massachusetts, Page 68, Chapter 6, Section III, is a provision granting school suffrage to women citizens, and strangely enough the Constitution of Massachusetts, in Article III, defines an elector including only male citizens, and expressly declares it to be a bar to all others. The general laws of Minnesota, page 168, confer the right to vote on educational matters upon women citizens, and Section 1, of Article VII, of her State Constitution, is almost a copy of Section 1, of Article II, of our State Constitution, except Indians are mentioned in the former and Chinese in the last named.

Respectfully submitted.

LAURA DE FORCE GORDON.

IN THE MATTER OF THE CLAIM

OF

DENNIS JORDAN.

TWENTY-EIGHTH SESSION.

1889.



IN THE MATTER OF THE CLAIM OF DENNIS JORDAN.

SACRAMENTO, February 7, 1889.

In the Matter of the Claim of Dennis Jordan.—Taken before the Senate Committee on Claims, Thursday, February 7, 1889. Present—Meany, Chairman: Roth, Fraser, and Langford.

THE CHAIRMAN: Gentlemen, this is the claim of Dennis Jordan, for work done on the Branch Prison at Folsom. The claim was before the Committee on Claims the last session of the Legislature, and all the evidence taken and sworn to, and it seemed to me that they simply took the whole thing away from——. I am familiar with the matter myself, but I desire that every member of this committee shall be familiar, also, with the nature of the claim before passing upon it. There is here some of the testimony taken two years ago, which I think ought to be read to the committee.

MR. RYAN: I will read this testimony—it is signed by every member of the Committee on Claims in the Assembly—I will just read this for the benefit of the committee. It was Mr. Jordan's wishes two years ago that the testimony be taken, which was done. I will read this report, presented by Mr. Mulgrew, Chairman of the Committee on Claims of the Assembly. It is as follows:

“MR. SPEAKER: Your Committee on Claims have had under consideration Assembly Bill No. 178, to pay D. Jordan, contractor, for labor and materials furnished in the construction of the Branch State Prison at Folsom, and beg leave to make the following report:

“It was Mr. Jordan's request that the committee examine every competent witness obtainable. Your committee had before them a printed copy of the evidence given before the Joint Committee on Claims at the last Legislature, which is a part of the Appendix to the Journal of the twenty-seventh session. The witnesses were as follows:

“D. Jordan, the contractor; John Calvert, John L. Cook, Willis E. Davis, Daniel McHenry, Michael Murphy, Thomas Welch, ex-Lieutenant-Governor Jas. A. Johnson, and Hon. Thos. Beck, ex-Secretary of State, who acted as Prison Directors at the time the work was going on, also Jas. M. Duncan, who acted as Superintendent of the work on behalf of the State.

“At the twenty-seventh session the Committee on Claims of the Senate and Assembly unanimously recommended the payment to Mr. Jordan of \$50,345 45, the original bill asking for \$79,000 to cover profits on work completed, interest, plant, etc.

“Shorn of these items, the amount recommended by the Joint Committee was to cover the unfinished payments for work done by Mr. Jordan under the contract, money actually expended and extra work ordered by the Prison Commissioners upon recommendation of the architect.

“The testimony taken two years ago was printed and placed before the members of the Legislature, both branches whereof passed the bill as amended. It went to the Governor at the close of the session. His Excellency, without investigation as to the merits or demerits of claim bills,

drew a line against all where there had been a failure to comply with Section 672 of the Political Code, with reference to their presentation to the State Board of Examiners.

"At the present session, a bill to provide for the payment to Mr. Jordan of the amount recommended by the last Legislature was introduced. In its report to this Legislature the State Board of Examiners, with reference to Mr. Jordan's claim, which had been submitted to them, report as follows:

"This claim was fully considered by a joint committee of both houses, during the last session of the Legislature, and a bill was passed making an appropriation to pay the same, but which failed to become a law by reason of the refusal of the Governor to approve it. This Board does not wish to act in a judicial capacity, where the Legislature and the Executive do not agree, and, therefore, we refer the claims to your honorable bodies without any special recommendation, except, in order that no injustice may be done, to call your attention to the report of the Joint Committee on Claims of the last session of the Legislature, published in Volume 8, of the Appendix to the Journal of the Senate and Assembly, twenty-seventh session.'

"Your committee, to whom this claim has been referred, beg leave to report, additional to the foregoing statement of facts, that it has had recourse to the testimony to which attention is directed by the State Board of Examiners, and additional thereto, the principal witnesses, whose testimony was heard at the twenty-seventh session, were subpoenaed and appeared before us during our investigation.

"We find that Dennis Jordan entered into a contract with the State on July 25, 1878, to build a branch prison at Folsom for the sum of \$161,500, to be paid in monthly installments at the rate of ninety per cent of the value of the work done, on the first of every month. We find from the evidence and the records of the Treasurer's office that those monthly payments were not made in accordance with terms of the contract. Mr. Jordan commenced work on or about August 1, 1878, and from that date to February 1, 1879 (six months), he received only two payments—November 28, 1878, \$4,222 59, and on December 30, 1878, \$5,182 08, making a total for six months of \$9,404 67—while during this time it was in evidence that Mr. Jordan had done extra work authorized by the architect and Commissioners amounting to \$10,196 90, which would leave coming to him for extra work, over what he had received from the State up to that time, a balance of \$792 23.

"It was conclusively established that Mr. Jordan was, from the outset of his contract, hampered and harassed by the architect, who, by virtue of a clause requiring the work to be done 'to the satisfaction of the architect,' exacted unreasonable and well-nigh impossible performances on Mr. Jordan's part. It was in evidence that Mr. Bennett, the architect, did not appear at the building on or about the first of the month to make the 'progress estimate,' as per contract; that whenever he did come he had gone around condemning the work that had been done under the supervision of Superintendent Duncan.

"Mr. BECK testified: It appeared to me to be a very unreasonable proceeding on the part of the architect. I know he was very unreasonable. He expected better work than was required, and better work than the spirit and meaning of the contract ever intended. On one occasion, in company with Governor Irwin, Lieutenant-Governor Johnson, and Mr. Bennett, I went where the latter wished us to go and condemn work done by Mr. Jordan. On arriving at the grounds, Mr. Bennett called our attention to the floor of the cells, about sixty feet long, which he said was not level, and had to be taken up. Now, as Mr. Bennett came there with us,

I thought it was very strange that he should know the floor was not level. The floor was laid with large slabs of stone, in most cases the full size of the cell. I said, 'Before we put that to a vote, I propose to level and see this for myself.' I procured a straight-edge, twenty feet long, and leveled the whole floor, and ascertained that it was scarcely three eighths of an inch out of level, which, considering the large size of the stone slabs and the extent of the floor, would be as near as any one could possibly make it. The architect then called us inside the cells, where he showed us stone laid in the walls that he had marked with red chalk here and there, all over the walls. Mr. Bennett said he had condemned those marked stones. That stone, used on the front of an elegant building on Montgomery or Kearny Streets, would hardly pass; but in a cell, for strength and such things as that, it was perfectly satisfactory to any reasonable man. To take these stones out meant to take the whole wall down, because they were put in with iron dowels and were just like one solid stone. I wish to state here that I am an architect myself, and know what I am talking about.

"Q. How far had the work progressed at the time Jordan was forced to give up the contract? A. Well, he had the outside wall pretty near finished, and a large portion of the cells. I don't know exactly what portion of the cells, but he had them pretty well progressed.

"Q. Would you estimate that he had half his contract completed, or a little more? A. Yes, sir; a little more. I said to Mr. Bennett after we returned to Sacramento: I never want you to place me in that position again; it is a very disagreeable position to place me, holding the office I do, because it compels me to appear as a friend of Mr. Jordan's. Your unreasonableness with him shows me to be working as a friend to him and against the State. Well, there were a hundred little things I should mention, which made it appear that Bennett wanted to freeze him out. There were many other things I would have objected to had I not been placed in that disagreeable position. His order to put on so many men and so much material, three or four months before it was needed, was unreasonable, while some of the material was never needed at all. I rather chaffed at being placed in the position of apparent friend to Mr. Jordan and so I acquiesced regarding the order. Mr. Beck's evidence is corroborated by that of Lieutenant-Governor Johnson, and also by Superintendent Duncan, who says: 'Mr. Jordan should be paid; I think the State threw obstacles in his way.'

"Q. Do you think that, at the time the State took the work from Mr. Jordan, he had completed half or more than half the work? A. Yes, he had completed more than half.

"Q. What do you know about the extra work that Mr. Jordan claims? A. I know that he had a supplementary contract for building a culvert, amounting to \$2,400. I know he took up a large number of cell foundations and rebuilt them. These foundations were put in under the Mills' contract, and as they did not go down deep enough to secure a good foundation, the walls had settled in all directions; and, through my advice, the architect and Commissioners had the walls taken up, and in some places went down to a depth of fifteen feet. I also know that when we came to put in the foundations of the approach building, we had to excavate to a depth of twenty-two feet; and in order to reach the bottom, we had to case the sides of the trenches with plank, in the same manner as is done in excavating for sewers, to prevent the earth from caving in. The dirt had to be hoisted out in tubs, and the stone lowered to its place. This was very expensive work.

"Q. Do you know how much this extra work cost? A. No, I do not; but the walls were about six feet thick at the bottom. I was ordered by Mr. Bennett to take measurements as the work progressed.

"Q. Did you take measurements? A. I did, and also made sketches every day. I had to do this, as we filled in around the walls as it was built. Mr. Briggs, foreman mason for Mr. Jordan, and myself agreed upon these measurements as the work progressed, and when Mr. Bennett came to make his progress estimates, I gave him those measurements, and Mr. Bennett would invariably cut down my estimates without any apparent cause.

"Q. Do you know how much plant Mr. Jordan had on the ground at the time the State took charge? A. Yes, sir; the plant was estimated to be worth between ten and eleven thousand dollars.

"Q. What way have you of knowing it to be worth as much as that? A. Well, the plant was attached, and an inventory taken of it, and Mr. Davis came in and paid off all the attachments. It was estimated to be worth \$10,000, but I know it was worth more than that.

"Willis E. Davis testified: I am the son of Mr. Davis, of Davis & Cowell, of San Francisco; that his father had furnished materials and advanced money to Mr. Jordan. I went to the prison building to represent my father's interest, and while I remained there Mr. Jordan carried on the work continuously. I was there till he was pushed out by the State.

"Q. What were your observations and what were your conclusions as to Mr. Jordan's trouble? What was it that created his difficulties? A. Well, the trouble commenced. Of course, the main thing was his not being allowed sufficient pay according to the work he had done, and the continual trouble with the men, which was brought about, as we supposed, through the agent of Bennett, who caused dissension among them. This was brought about by the architect telling the men that Jordan could not carry on the work, and caused them to strike and delay the work with the object in view of getting him out. Mr. Bennett came to me one day, and said that I had better try and induce my father to drop Jordan; that he would have to be gotten out of that; that it would be a bad business to continue with him. He wanted me to induce my father to withdraw from Jordan all the time. On account of the small estimates made by Mr. Bennett, my father furnished money to Jordan to carry on the work, so Mr. Bennett was very anxious to have me induce my father to withdraw from it, as another means of crippling Mr. Jordan.

"Q. Is it your opinion that some officer or officers of the State at that time put some obstacles in the way of Mr. Jordan? A. Most assuredly. I could see Mr. Bennett go among the workmen and talk to them. I could not overhear him, but it was a very common thing for him, when he came up there to make an estimate, to go among the men; I knew what his object was.

"Daniel McHenry, foreman for Jordan, and afterwards for the State, corroborated most of Mr. Davis' testimony, and, in reply to a committee-man's question, 'When you saw Mr. Bennett talking to the men here and there, was it settled in your mind that Mr. Bennett had a job on Mr. Jordan, and wanted to oust him?' he answered, 'Yes, sir; he talked that way to me.'

"N. P. Perine was sworn and testified: I am an old contractor, and know Mr. Bennett and Mr. Jordan. Shortly after Mr. Jordan commenced the work Mr. Bennett told me in San Francisco that he was 'going to bust Jordan wide open.' I thought it very unjust of Mr. Bennett, and told Mr.

Jordan shortly after they took the work away from him, that if it ever came to a suit, and he wanted me to testify, I would willingly do so.

"JOHN L. Cook testified: I had a contract with Mr. Jordan to do the iron work. When I commenced my contract Mr. Bennett started in to abuse us, and tried his very best to get us off the ground.

"Q. In what way did Mr. Bennett try to get you off the ground? A. He would go around and knock his cane against the work and say, 'This won't do, this don't look right,' and when I would ask him, 'What didn't look right?' he would give me no explanation but would say, 'It is not done right.' I asked him one time if the State would do the work if they got Mr. Jordan off, when he replied, 'Jordan was no man to do it, and would never carry it out.'

"Q. Did you hear him at any time make statements that 'It would be better for all parties when the State got it out of his hands?' A. Yes, sir; he stated that to me. He intimated to me that if the Livermore crowd got it, it would be better for all hands.

"Q. How do you account for those underestimates and those derelictions on the part of the State? A. Well, I don't know how to account for them more than I think Mr. Bennett wanted to get his bids in.

"Q. Wanted to control it himself? A. Wanted to control it himself."

After hearing all this testimony we have come to this conclusion:

That Mr. Jordan had completed one half the work, and that therefore he is entitled to one half the amount of \$161,500, the amount of his contract—

Which would come to.....	\$80,750 00
Mr. Jordan's bill for extra work performed, would amount to	10,196 00
And for his plant.....	10,000 00
Amounting in all to	\$100,946 00

From this amount are to be made the following deductions, paid him by the State:

Total amount of architect's certificates.....	\$32,033 24
Money paid for plant.....	5,350 00
Total.....	\$37,383 24
Leaving a balance coming to D. Jordan of.....	\$63,563 00

The joint committee of the twenty-seventh session took for a basis of calculation the amount actually expended by Mr. Jordan, namely, \$73,645 03 instead of \$80,750 00, the sum equal to half the contract; in brief, refusing to allow anything for profit. It also refused to allow anything additional for the plant, and rejected some items put in Mr. Jordan's claim for extra work, thus reducing the total of the claim to \$50,345 45, for the payment of which latter amount Assembly Bill No. 178 provides, and your committee recommend that it do pass.

MULGREW, Chairman.
BLACK.
SHANAHAN.
REAVEY.
YOUNG.
SALOMON.
McKEOWN.

MR. LANGFORD: Is Mr. Jordan here?

MR. MEANY: Yes, sir. Mr. Jordan, you will please be sworn.

TESTIMONY OF DENNIS JORDAN.

Sworn.

Examined by MR. LANGFORD: What transpired between you and the Governor—was there any compromise or settlement—or what did transpire? Answer—There is nothing did transpire. I made my complaint to the Governor and the Commissioners, and the Commissioners told me that they could not possibly interfere between the architect, because he had all the power, and they were powerless. There was a letter here; there was a letter introduced in my former testimony here, that I had received from the Governor in answer to my complaint about not getting my payment—not getting it regular, and not getting enough of it.

THE CHAIRMAN: The idea Mr. Jordan wished to convey was that if they had given him the 90 per cent on the work performed, and not pay him a great deal less, that he would have been able to continue the contract.

THE WITNESS: I was getting along with it nicely—I got it all through the rainy season—I worked on it nine months, and I was just starting in the first of May.

MR. LANGFORD: I don't know that I understand you, and I may do you an injustice, and I wish to do you justice. I have a recollection that Governor Irwin stated before this committee, in 1880—you were here then, were you not? A. Yes, sir.

Q. You were well represented then, and the case was pretty fresh? A. Yes, sir.

Q. On what grounds did this committee refuse you in 1880? A. I did not have any claim in '80; I was only subpoenaed here as a witness; that was the investigation of the State Prison Committee, and I was subpoenaed, like others, as a witness.

MR. RYAN: You will find from the report of that committee, that they said that Mr. Jordan had a good claim against the State if he wanted to put it before the Legislature.

MR. LANGFORD: What year was it that this case was first tried here? A. I think it was in 1880.

Q. This same claim? A. I had no claim in at that time.

Q. How was it? A. I had no claim before the Legislature of that year. I only came here as a witness to give testimony as to the way this thing was managed.

Q. How did it happen that you did not present your claim then? Was there a settlement of any kind? I am trying to find out whether there was or not. A. There never was a settlement made, and the whole report is in that book. We have the book here. I think Mr. Ryan has the book here to-night.

MR. ROTH: Am I right about this—that you and Mr. Bennett fell out about the character of the work, and the manner that you executed the work; he claimed that it was not up to the contract? A. No; he found fault with the stone work, and I had some of it changed, and he always accepted this work; none of that was taken up.

Q. Well, what was the trouble between you and Mr. Bennett? A. About the peine, that work.

Q. Peine-hammered? A. Well, we had the stone hammered. The trouble was they did not pay me my money, and the Treasurer's books will show that up to the time they took the work away from me I had only actually received, over and above the extra work, ten thousand four hundred dollars. Then I worked on it nine months, and I done half the

work, or more: and I done ten thousand dollars' worth of extra work—ten thousand two hundred dollars.

Q. Well, what evidence have you about the extra work—is that in Mr. Beck's testimony there, who gives testimony here that you done extra work? A. Duncan, the Superintendent.

THE CHAIRMAN: Duncan, the State Superintendent, was not there working for you, but he was watching for the State? A. Yes, sir.

MR. RYAN: Here is the part of the committee's report, taken from the twenty-third session of the Legislature. The Legislative Commission investigated the acts of the Commission, and here is some of their report, which shows one of the reasons why he was forced to give up his contract. I will read it:

"It was ordered that Dennis Jordan, the contractor for the building of the Folsom Branch State Prison, be required to place on the said work, in addition to the one hundred and fifty men required to be placed thereon by an order of date April 1, 1879, and keep continuously thereon, the following number of mechanics and laborers, to wit: Seventy-five stonecutters, fifty quarrymen, seventy-two stone-masons, twenty-eight tenders, six blacksmiths, ten general laborers. And to procure the following material, to wit: Five hundred barrels of Portland cement, one hundred barrels Rosendale cement, five hundred barrels lime, five hundred cubic yards sand, six thousand pounds steel (including hammers), five hundred pounds plugs and feathers, one million bricks, ten tons Cumberland coal, three dozen blacksmiths' files, three mules, two one-inch Norway iron chains eighteen feet long, four three-fourths-inch Norway iron chains fifteen feet long, two bundles five-eighth Norway iron, twelve bars three-fourth Norway iron, two coils four and one half-inch Manilla rope, two coils four-inch Manilla rope, three sets blocks twelve or fourteen inches, one hundred kegs assorted nails, two hundred kegs blasting powder, one thousand feet fuse, ten sets blacksmiths' tools, forges, etc., one hundred and seventy-five thousand feet lumber and sufficient mill work."

Now, you will see that it calls for one million brick, but not more than one hundred thousand brick was used altogether: but they ordered him to have one million brick, and this he was to provide in fifteen days. The report proceeds as follows:

"It appears from the testimony that the architect and Governor Irwin were the prime movers in the making of such requisition, and that many of the things directed to be procured at once would not be required for months afterwards, and until near the completion of the work: and Governor Irwin himself stated, that when he made the requisition he did not expect that Mr. Jordan could fulfill it: that he thought it was impossible for Mr. Jordan to comply with the requisition. By the terms of the contract, the contractor was to have fifteen days from the making of any such requisition in which to comply with its terms: but, notwithstanding, it appears by the records of the Board of Prison Directors, that on May 19, 1879, six days after the requisition was made, and before the work came under the control of the Directors, the Board employed Mr. Johnson as foreman of the work at the prison, at a salary of \$200 per month. It appears, also, from the testimony of Governor Irwin and Mr. Duncan, that within a few days after the making of this requisition, Governor Irwin instructed Mr. Duncan to procure anything that was necessary for continuing the work of Mr. Livermore."

MR. LANGFORD: Who was the attorney in that case? A. I did not have any attorney; all that evidence you will find in the Senate Journal of that year.

Q. It strikes me I was a member of that committee that year? A. No; I don't think you were, Senator.

MR. ROTH: Why didn't you present your claim at that time? A. Well, I was all broken up; it was just after the work had been taken away from me, and I didn't hardly know what I would do about it. I should have presented it before, but I didn't know how to go about it. I knew I could not sue the State, and that year I had not thought about presenting my claim to the Legislature.

MR. LANGFORD: And you now know that you cannot sue the State, and you knew then that you could not sue the State; what I am getting at is, if there was a compromise, or whether there was any money paid you? A. No, sir; not a cent—not one five cents.

Q. How did I get it in my head that this thing was compromised in '80, or prior to '80? A. Well, it was on account of that investigation that they had of the prison; that is the way you got it in your head.

Q. The investigation was conducted by Tyler, was it not? A. Yes, sir.

Q. And it was Tyler's intention to give Irwin all the trouble he could? A. Well, I don't know about that.

Q. I think there was something in that, and it seems to me if we could get that proceeding, we could find out. A. Well, Mr. Ryan has gone after that.

Q. Who were the Commissioners that year? A. Governor Irwin, Lieutenant-Governor Johnson, and Secretary Beck; but they could do nothing with the architect; the Governor told me several times that it was impossible.

Q. Who appointed the architect? A. The Commissioners.

Q. And they could ship him, could they not? A. I suppose they could, I don't know; but his name was mentioned in the bill that was passed appropriating the money to go on with this work. I think Bennett's name was in that bill.

Q. Did you have any acquaintance with Bennett when you took the contract? Did you know anything about him as an architect? A. Yes, sir; I knew him as an architect.

MR. LANGFORD: He was appointed an architect of this building once.

MR. FRASER: He drew the Merced jail and Court House.

MR. LANGFORD: And the jail in Stanislaus County.

THE WITNESS: I think he had all that built before.

Q. Was he the architect at the Tulare jail? A. I don't know whether he was at Tulare or not.

THE CHAIRMAN: Yes, he was.

THE WITNESS: All that work I think was done in 1876.

MR. LANGFORD: I don't know how I got it in my head that there was a complete settlement between you and the State about that work? A. No, sir; there was never any settlement between me—the first time I ever appeared to look after this claim was the last session of the Legislature. That was the first time I ever put in any claim.

MR. FRASER: Was there any settlement about your tools or plant? A. They allowed me for the tools and plant five thousand three hundred and fifty dollars, and that is credited in this account.

THE CHAIRMAN: That is credited in this statement.

MR. FRASER: The Board of Commissioners, Beck and Johnson, allowed you for the tools? A. Yes, sir; they might have allowed me one thousand dollars, and I would have taken it the same.

MR. LANGFORD: How did they come to get you out of there? A. They made this requisition on me to put on seventy-five stonecutters, and

seventy-two stonemasons, and to furnish several hundred kegs of powder, and to put on so much more tools, and to furnish a million and a half of lumber, and to furnish a million of brick, when their own report, the Commissioners report, of that year showed what they paid for brick only amounted to four hundred dollars; that includes the freight from Sacramento up there and delivering them on the ground. It would not amount to over thirty-five thousand brick at the outside.

THE CHAIRMAN: You say there were only about thirty-five thousand brick used, and they made a requisition on you for one million? A. Yes, sir; for a million. There was no brick required except to use in the chimneys.

MR. LANGFORD: Who was the attorney that was here in '80?

MR. RYAN: I don't know whether there was any attorney here at all. There was an investigation of the State Board of Prison Directors—not an investigation of Mr. Jordan's claim; but Mr. Jordan's claim that he now makes came up indirectly, but he did not have any claim before the Legislature at that time, but they as much as said in the report that he ought to be recompensed for the loss that he had sustained by reason of the failure of the State to keep their contract or keeping their faith with him.

MR. LANGFORD: I don't see how in the world they got him out. If a man has a contract with the State, and he goes off, and they pay him for his tools, it is something that is not just exactly in accordance with the routine of business.

MR. RYAN: He was forced off. They took it away from him absolutely, and did not give him any say in the matter one way or the other. They took it away from him, and put another man there. The contract shows it had not lapsed or would not for six months. They just simply put another man there, and the balance of that work cost the State the sum of two hundred thousand and odd dollars. The attorney was Catlin.

THE WITNESS: The report is in that Journal.

MR. RYAN: Now, here is the portion of that report—the report of the State Prison Committee—their findings in 1880.

MR. LANGFORD: What are you going to read from?

MR. RYAN: I am going to read from the report of 1880 and 1881. This is the testimony that was taken before the Committee on Claims two years ago, and it is quoted from the report of the examination there by the State Prison Committee—by a joint committee of the Senate and Assembly in 1880 and 1881. Here is what they say:

“We find that for some reason or other the architect seemed disposed to put obstacles in the way of Mr. Jordan in the finishing of the contract, often condemning work and requiring it to be removed that had been accepted by the Superintendent, Mr. Duncan; and he often stated to the men working for Jordan that there would not be money enough coming to him, Jordan, to pay the men their wages at the end of the month, and telling them at the same time that it would be better for them when Jordan should cease work, and the Directors take the finishing of the work into their own hands. To such an extent was this carried that Mr. Beck, who seems to have been perfectly just and fair toward Mr. Jordan, stated that he at times was forced to place himself in the position of seeming to act as the friend of Mr. Jordan in the contest between him and the architect.”

Now, there is one thing you refer to here, that is peine-hammered stone. It seems to me that in the original contract or specification the work was to be “well hammered,” and after the bid was in the contract was changed to peine-hammered—it was done at the suggestion of the architect; there is where the great difficulty arose between Mr. Jordan and Mr. Bennett.

Mr. Bennett seemed to take advantage of that to insist upon the work being done peine-hammered; and the work that was done by Mr. Jordan, as testified here by Mr. Beck and Mr. Duncan, is the best work that is in the prison to-day; and the work that was subsequently done by the State does not begin to compare with the work that he did.

MR. LANGFORD: That might be, but still it might be that Mr. Jordan did not complete his contract in the way of doing his work.

THE WITNESS: Yes; it was all satisfactory, except where he had those stones marked with the red chalk—they were not taken out, but I peine-hammered them over again in this place without taking them out—peine-hammered them over.

MR. RYAN: You will find from the testimony of Mr. Jordan that that was perfectly satisfactory.

THE CHAIRMAN: It seems to me that it is entirely irregular to wait until they got the work up, and then undertake to tear it down; they had a State Superintendent there to attend to that.

MR. ROTH: Did they have a State Superintendent?

THE CHAIRMAN: Yes, sir.

THE WITNESS: The architect, Mr. Bennett, would go around once a month, or once in two months, and find all manner of faults.

MR. LANGFORD: What does Mr. Catlin know about that: does he know anything about that? A. Well, he acted as the lawyer for Governor Irwin.

MR. RYAN: I will state that Mr. Catlin drew up the report of the committee for Governor Irwin, and that report was never signed by any member; but the report that was signed was the report that was favorable to Mr. Jordan. You will find that in the Appendix of the Journal.

MR. LANGFORD: Mr. Johnson was the Lieutenant-Governor at that time? A. Yes, sir.

THE WITNESS: Johnson stated that he was not at the prison much because he was down at the other prison; he was acting as the Warden of the other prison, and he did not come there often, but he was there on this occasion when Bennett wanted the work taken up.

MR. RYAN: And when Beck made the measurement and found it was only three-eighths of an inch out of plumb ———.

THE WITNESS (interrupting): Mr. Johnson gave his testimony to corroborate all that Mr. Beck said as far as he knew about it.

MR. FRASER: How long did you have to do all this contract work in? A. Fifteen months.

Q. How long did you work at it? A. I worked at it nine months.

Q. What part of the contract did you do in nine months—did you do the half of it or two thirds? A. Well, I considered there was a full half of it done.

Q. Half of it in nine months? A. Yes, sir; and that was in the winter months. It was a very bad winter that winter, and it took some time to get my plant and everything on the ground, and open a quarry, and build a railroad track from the quarry to the prison, and through the prison, through the aisles and corridors of the prison, and I got my stone right in there and set them with the derrick.

MR. LANGFORD: What is the testimony in regard to this extra work—who designated the extra work? A. Well, there was some extra work on a supplemental contract; there was twenty-four hundred dollars agreed upon, but it could not be figured until we had taken up the foundation and went down and measured, as Mr. Duncan says in his statement there. Mr. Duncan was authorized to measure the work as the work progressed,

and he did not say. He made measurements and made sketches at that time of it, and I gave them to Mr. Bennett.

Q. Mr. Bennett is not living, is he? A. Yes, sir.

THE CHAIRMAN: Yes, sir; we sent for Mr. Bennett two years ago, but he never put in an appearance. He was subpoenaed by the committee.

THE WITNESS: Mr. Bennett is paralyzed—he cannot speak.

THE CHAIRMAN: He cannot speak. His mouth is paralyzed and he is not in very good health.

THE WITNESS: No; he cannot speak.

THE CHAIRMAN: We had Tom Beck here last time—the Secretary of State. He was one of the Commissioners. He said Mr. Jordan was very badly treated and that he ought to be paid, and he said so too in the street afterwards. He said at that time that he never saw a man as badly treated as Mr. Jordan. That it rendered him a wreck physically, mentally, and financially—it broke him right up. And Duncan was here and testified before the Commission.

MR. LANGFORD: Let me ask you a question, Mr. Jordan. How it was and why it was you did not present your claim in 1880? A. Well, sir, I was so broke I didn't know hardly what I was doing, Senator—it set me almost crazy. If I was to put a rifle in every one of my men's hands to keep off the Governor when they were going to take the work away from me, I could not keep the work. If I were to put a rifle in every man's hand, he could call out the militia. He had the power.

Q. My impression is that you had been settled with and compromised with, and they allowed you so much and you put in your tools that you had there? A. No, sir.

Q. I don't know that I am right about that? A. I am on my oath now, Senator.

THE CHAIRMAN: We will swear you, Senator Langford. Do you want to be made a witness, Senator Langford?

MR. RYAN: No; you will find there was no settlement; we have been trying to get one.

MR. LANGFORD: Well, it is very strange that the claim was not put in.

MR. RYAN: Well, there are a great many strange things that occur in regard to State affairs.

THE CHAIRMAN: Here is my judgment about it: I guess Mr. Jordan was pretty badly broken up when he was put out. If he had a big sack behind him he would be better able to fight. Beck gave his testimony in a very feeling way when he gave his testimony two years ago, and thought Jordan ought to be relieved.

MR. ROTH: I have only one side of it; I have not heard Johnson, who was Lieutenant-Governor at the time.

THE CHAIRMAN: He was here and testified in this man's favor. Johnson was here the other night, and testified the other night.

MR. LANGFORD: Where is his testimony?

MR. RYAN: Here is the testimony taken two years ago. He was sworn and examined by Attorney Young. I will read it.

“Testimony of Lieutenant-Governor James A. Johnson. Sworn. Examined by Attorney Young:

“Q. You were present on the occasion referred to by Mr. Beck, were you? A. Yes, sir; I was present on both occasions mentioned by Mr. Beck.

“Q. Without further questioning, please state what you think about the matter? A. Well, I was there about the time of the dispute about the floor. I saw Mr. Beck take the level and go over it, and the result was as

he has stated; the work was not disturbed. I was there upon the other occasion, although I was not often there. I was there when these stones were marked on the inside of the cells to be taken out. They were not taken out. There was a great deal of harping about it, and a great deal of talk, and some very angry feeling. About the attitude laid to the architect and his arbitrary manner of exercising his authority, I don't want to say anything about. He may have been trying to force Mr. Jordan out, and he may not have been. He may have thought it was his duty to get the very best work to be got, and if he could not get good work, to discharge Mr. Jordan. I don't know what his object was. I would not like to find any fault with Mr. Bennett, although the result of his administration was to break Mr. Jordan up.

"Q. That would have been the result, I presume, with any contractor and with such an unreasonable architect? A. I suppose so. I believe Mr. Jordan was not paid 90 per cent of the work as it went on—was not paid 90 per cent of the work as it progressed, was he?

"MR. BECK: That was the contract price, but it was held back on many occasions, and the full amount on many occasions was not paid to him.

"THE WITNESS: I want to state to the committee, as I was one of the Prison Directors, that I did not live here. They had to hold meetings in Mr. Beck's office, or the Governor's office. They held meetings every few days. I never was notified and attended very few meetings. Besides these two occasions that Mr. Beck speaks about, there was only one other time I visited the prison during the four years I was Director. I used to attend the meetings once in awhile. Well, the result was to force Mr. Jordan to give up the contract. It was ruled, I suppose at somebody's instance, that he should furnish seventy-five men to work, so many barrels of lime, so many barrels of cement, and so forth, and the State did not furnish him the money.

"ATTORNEY YOUNG: In corroboration of this witness' testimony, and also of the statement of Mr. Beck, as to the claims being withheld, we will introduce in evidence a written statement of when the work was performed. Work was finished December 26, 1878; it was allowed March thirteenth, and was not paid till May 13, 1879. The work was completed and the estimate made on December 26, 1878; and then, as the evidence showed the other day, instead of it being ninety per cent, it was only about thirty per cent."

MR. RYAN: So the testimony of Lieutenant-Governor Johnson was that he was not paid according to his contract, and also that the effect of Bennett's administration was to break up Mr. Jordan?

MR. LANGFORD: That would cut no figure in the case, if Mr. Jordan was not doing his work according to the terms of his contract.

MR. ROTH: It seems to me that it would not make a single particle of difference, as long as the State had a man there to accept the work, and he accepted it. If the State had a man there, under pay, to take charge of that work for the State, and that man accepted that work, day after day, and week after week, I don't care whether the work was made of straw, I claim we have a right to pay him.

MR. FRASER: I was going to ask Mr. Jordan if that stuff that they made a requisition for had to go into the building, under your contract? A. No, sir. You can judge what the requisition was, when they ordered me to furnish a million brick; and to-day you will find by the report of the Commissioners that the total amount of money they paid out for brick was about \$400.

Q. Did you keep a copy of that requisition? A. Yes, sir; it is in that report—the report of the Commissioners of that year; it is in their report.

MR. FRASER: That would have been pretty good evidence, for you to show that they had made a demand on you for things that could not have gone into the building, under your contract? A. Yes, sir; we did so at the last session of the Legislature. If you recollect, reference was made to that at that time; things all came out in that investigation.

THE CHAIRMAN: How much brick do you say was used? A. About thirty-five thousand of brick. No brick was required, except to top out the chimneys. It was all stone work, and I had all the outside walls completed at that time.

Q. If you had complied with the demand, you would have had all those bricks on your hands? A. Yes, sir; they were not wanted there.

MR. FRASER: And how about the lumber? A. The lumber was not wanted—not the half of it.

THE CHAIRMAN: Was it by reason of this immense requisition that you got in this quarrel with the State? A. That was the excuse.

MR. FRASER: You did not have time to perform this work—you could not fulfill your contract—when they made an arbitrary demand on you to furnish this material at that time? A. That was their object.

MR. RYAN: It is stated in their report, in 1883, that they knew at the time he could not furnish these things when they made the demand. It was for the purpose of breaking him up.

MR. LANGFORD: It would require better evidence than a simple assertion before I would believe that Governor Irwin would do anything of that kind.

THE CHAIRMAN: I am satisfied that it was Bennett that did it: and Beck says so, and Johnson said so, and Perrine testified that he told him in San Francisco that he would burst Jordan wide open.

MR. LANGFORD: What kind of peine work does that contract call for?

MR. RYAN: Peine-hammered.

THE WITNESS: It says to be done according to the plans and specifications. It does not mention the peine-hammered work; but there was some work done there under the Miles contract, and this was to be the class of work I was to do. When I went up there I went to see what kind of work was already done, and some of this work Miles done had to be taken up. Where I took up Miles' work I used the same stone in the same cells, and this was the work that Mr. Bennett objected to more than any other. I took those stones as they were and used them, because they had been in use before, and those were the principal stones that he objected to; and there were three witnesses that showed where Bennett had talked with them about driving me off from the work.

MR. LANGFORD: I do not take it that a State officer like the Governor of the State of California—

MR. RYAN [interrupting]: We do not say that; we say the Governor was controlled entirely by the architect.

THE CHAIRMAN: I guess the Governor had something else to think of.

MR. RYAN: The Governor was perfectly honest; I have no doubt about that. Mr. Davis testified: "I am the son of Mr. Davis, of Davis & Cowell, of San Francisco; that his father had furnished materials and advanced money to Mr. Jordan. I went to the prison building to represent my father's interest, and while I remained there Mr. Jordan carried on the work continuously. I was there till he was pushed out by the State."

THE CHAIRMAN: Were the payments to be weekly or monthly payments? A. Monthly payments.

THE CHAIRMAN: Mr. Bennett did not seem to be satisfied with that, but he tried to keep anybody from furnishing Mr. Jordan with money, and this is in accordance exactly with the statement of Mr. Beck.

MR. ROTH: The State went on and completed the work, and it cost the State some two hundred and odd thousand dollars.

THE CHAIRMAN: Well, we will assume it did not cost any more; still the work was not as good as Jordan had done.

MR. LANGFORD: How much money was he paid in all?

THE CHAIRMAN: Thirty-two thousand five hundred dollars.

MR. ROTH: That is shown by the warrants in the State Controller's office.

MR. LANGFORD: What do you claim now—how many thousand? A. I claim I completed half the work, and done \$10,000 extra work; and afterwards the State took charge, and bought the tools at Sheriff's sale.

Q. Who prosecuted you in that suit—outside parties or the State? A. Outside parties; I think about \$1,900.

Q. Then you just come in and lump it off?

THE CHAIRMAN: No; these figures were made by the committee two years ago. His claim was for \$70,000, and we reduced it to \$50,000. We aimed to give Mr. Jordan the difference between what he actually spent on the building and what he received. That is the way we arrived at those figures, as well as I understand.

MR. ROTH: Yes, sir; that is the way it was arrived at.

MR. FRASER: Did you owe any money to the workmen on this building? A. No, sir; not a dollar.

Q. Has Christy any claim on that building? A. Not a dollar; no, sir.

Q. Has he got his money for the lime he furnished you? A. He never furnished lime; he furnished an engine. I took it on the ground; he was to sell it to me for \$800, but he sold it to the State for more than \$800. That is in the Commissioners' report.

Q. What did the State do with it? A. Used it there. I had two engines of my own besides that one, used at the quarry.

THE CHAIRMAN: It seems this extra work was on the Miles contract? A. The surface settled and I had to take it up.

MR. FRASER: Did they allow you anything at all for any extra work in any settlement they had with you? A. Yes, sir; they allowed me on the twenty-sixth of December for a portion of this extra work, but not half of it. They did afterwards make an estimate allowing me for some more that I was entitled to get on the twenty-sixth of December. They made another estimate, and I didn't get it until May.

THE CHAIRMAN: Well, does this \$32,000 include all the money you received—extra work and all? A. Yes, sir.

Q. That would leave you \$22,000 on the whole contract? A. Yes, sir.

Q. And \$10,000 as extra work? A. Yes, sir.

Q. The extra work was all the foundation? A. Yes, sir.

Q. When you got up above the foundation, and started up with your walls, we will say you were paid \$10,000 for this extra work, that would only leave you on your original contract about \$22,000? A. The extra work came to \$10,192.

Q. You received in all \$32,033 24? A. Yes.

Q. Ten thousand dollars of that was for extra work? A. Ten thousand one hundred and ninety-two dollars.

Q. That would leave you about \$22,000 and a fraction over; no—would leave you a little over \$21,800 on your original contract; something like that? A. Up to that time they took the work away from me I only received in all about \$19,000.

MR. LANGFORD: Then they paid you some after they took the work away? A. Yes, sir.

Q. How did it happen that they paid you one payment more? A. I say the estimate was made on the twenty-sixth of December, but didn't get my money—never was paid—until after they took the work away from me. There was an estimate made and allowed on the twenty-sixth of December, but I never got that money then.

Q. There was an estimate made, but who made that estimate that was to give the 90 per cent, as I understand it? A. No; the 90 per cent I never got at all. I had to take anything the architect gave me—9 or 10 per cent—in some cases I didn't get 10 per cent.

MR. FRASER: They passed on all the work that was done? A. But they didn't give me what I done. It is shown here that when the last estimate was made—for May—Mr. Bennett only allowed me \$1,900 for the work that was done in the month of May, and I went to the Governor and complained to him of the great injustice that was done. I had to pay the stonecutters, and a great many stonemasons, and I showed this to the Governor, and the Governor ordered the man that took charge of the work in my place—Dennison, his name was—he ordered him to go and measure this work that Bennett measured. He went over this work again, and he allowed me, I think, \$2,200 more. That was only for about fourteen days. It was only about fourteen days' work, and I done outside work. Bennett allowed me \$1,900, and Mr. Dennison he came out there for the Governor and Mr. Beck, and he measured the same work I had done in May, and allowed me \$2,200 more for it.

MR. LANGFORD: Now, then, that was up to that time? That was all the work done up to that time? A. No, sir; only the work that was done in the month of May, commencing where Bennett started from.

Q. You must have been very good natured to let him impose upon you this way. A. I ought to have killed him—I could not sleep at night, because I ought to have killed the scoundrel: but now he is paralyzed, and cannot walk, and cannot speak.

MR. FRASER: You have the advantage of him there.

THE CHAIRMAN: Duncan was here two years ago I remember very well, that about half of the work was completed; and Mr. McHenry testified, I think, to that same thing.

MR. LANGFORD: You did not put this bill in because you were frustrated—that is all the reason you have—you were frustrated, you say, at that time? A. Yes, sir.

REPORT

OF

Committee on River, Harbor, and Coast Defenses.

REPORT.

MR. PRESIDENT: Your Committee on River, Harbor, and Coast Defenses beg leave to submit the following report:

By appointment, at ten o'clock on February 11, 1889, the Committee on River, Harbor, and Coast Defenses met, at his headquarters, Phelan Building, Brigadier-General Nelson A. Miles, commanding the Division of the Pacific, and Lieutenant J. E. Runcie, First Artillery, United States Army, and were taken by these gentlemen to visit the different fortifications surrounding San Francisco Harbor.

We may say here though, without further proceeding, that since the report of the last Senate Committee, in 1887, on River, Harbor, and Coast Defenses, there have been no changes in the condition of the defenses of the Harbor of San Francisco, except such as is due to gradual decay, the destructive action of storm, and a total lack of protection and repair. This destruction and decay is the less to be deplored, as the defenses and their armament are practically obsolete, and would prove, in their present state, inefficient against even a fleet of thirty years ago, not speaking of a modern fleet. Still, so as to give some idea of the defenseless condition of San Francisco, a city whose prosperity, subject to ransom, amounts to three hundred and fifty millions of dollars, and also to show the urgent necessity for immediate consideration of this matter, let us state a few facts as they appeared to us.

The first point visited on our inspection was Fort Mason (Black Point). The fortifications here were erected at a time when it was feared that the Confederate cruiser *Alabama* might visit this port. By this it can be easily perceived, that works deemed sufficient to repel the attack of a wooden cruiser of twenty-five years ago would be utterly inadequate to cope with the guns of a modern, steel-clad ship of war. These works consist of two earthen barbette batteries (batteries in which the guns are mounted so as to fire over the top of the parapet), but the parapets here are so low and thin that the entire gun and upper portion of the carriage is exposed and would be wholly at the mercy of an enemy's fire. It has also been necessary of late to dismount some of the guns in the batteries at this post, the carriages having become through age and decay so weak as to be unable to support the guns mounted on them. All the guns at this post are smooth bores; three of them being fifteen-inch guns which for want of carriages and position have never been mounted.

At Alcatraz, the next point visited, the works are more pretentious, but being in an unfinished state—work on them having been discontinued in 1876—are hardly of greater use. The armament here consists of four mounted fifteen-inch Rodman smooth bore guns and a few minor pieces.

At Angel Island the three small batteries built over twenty years ago are absolutely useless for purposes of defense; their ordnance is obsolete, and their gun carriages have been long since condemned. On the south side of the Golden Gate stands Fort Winfield Scott, a masonry structure incapable of resisting for an hour the attack of a single ship furnished with high power guns. During the past year the guns mounted in the

barbette of this work were removed, their ancient carriages being too much decayed to support even their small weight. In the casemates are mounted sixteen eight-inch rifled guns, converted from the old ten-inch cast-iron smooth bore by inserting a rifled tube of wrought-iron. These guns, though incapable of contending with any hope of success against modern guns of equal caliber, are, nevertheless, the most powerful guns in the harbor. They are mounted in an intenable structure, in positions which reduce their usefulness to a minimum. On the bluff behind the fort is an earthen barbette battery, in which are mounted eleven fifteen-inch smooth-bore guns. These works, like those at Alcatraz, have also been left unfinished since 1876. On the northern side of the entrance to the harbor are three earthen barbette batteries unfinished, unarmed, and going to decay.

There are some torpedo cases at Alcatraz, but no further arrangements appear to have been made for a torpedo defense. And such defense, made extremely difficult by the great depth of the water and the strong tides in the channel, would be of no avail without powerful guns on shore to prevent a hostile fleet from picking up or blasting out the obstructions to its passage.

It will be seen from the foregoing that the port of San Francisco, the second in importance in the United States, is practically without means of defense against the attack of a single modern armored ship, and the condition of things, in this respect, is constantly growing worse, for while all possible enemies are constantly improving their means of attack, our feeble defenses are as constantly going to decay for the lack of means necessary to preserve them. With regard to the other ports of this State little need be said; except at San Francisco, there is not a gun mounted between the Columbia River and the Mexican line.

Although Congress, in the last few years, has shown some disposition in this matter in appropriating money for our navy, still it would be very wise for our Senators and Congressmen representing this State to urge the expenditure of some of the vast amount of money lying idle, and which is constantly increasing, in placing San Francisco in a defensible condition.

This is a matter, we think, that has been considered long enough, and that it is about time that some action was displayed, as past experience has shown. It has shown that this country, through lack of facilities, is incapable of producing armament to cope with that of Europe. It has also shown that the few experimental orders given by this country to the workshops of Europe have only been filled after long delays, for the reason that they are wholly occupied by their own demands. If such is the case in small orders, how can we estimate the time required for the delivery of the large quantities we urgently need. Moreover, war would put at once a stop to such importations and leave us helpless in the emergency. Now, if our Government, instead of building vaults to store the nation's surplus money, would expend some of it in placing our navy yards in such a condition that instead of having to rely upon Europe for our means of defense we could manufacture them at home, not only giving employment to many thousands of our countrymen, encouraging home industries, promoting ingenuity, and increasing the nation's wealth, but also rendering our defenses independent of other countries. San Francisco may be shelled by vessels lying in the open sea five miles off the Cliff House, and there are no guns in this country of sufficient size and caliber to effectively meet this attack. Another matter of importance is that one of the navy yards that should be placed in condition is Mare Island, for the reason that it would be impos-

sible to transport any of the heavy modern guns from the East, on account of the existing railroad bridges and trestles being insufficient to sustain their great weight. We must also consider the time necessary to place San Francisco in a defensible condition, for it will take no less than three years to complete the projected system, including the armament.

It is time, then, to arouse ourselves and ask for that protection which Congress owes us. The people are taxed in order that Congress may pay the debts and provide for the common defense and general welfare of the United States. Our defense has not been provided for, and yet there is complaint that no way is known to use the money flowing into the Treasury. Our fortifications are years behind the other great nations of the earth, and still Congress until recently has remained inactive and heedless. We are all apt to overlook the vast expenditures of life and money which our wars have cost us, and fasten our attentions upon the results obtained. This past policy has made our military history a succession of blunders, to prevent a recurrence of which we must accept and act upon the maxim, "In peace prepare for war."

Your committee again recommend that our Senators be instructed and our Congressmen be requested to immediately urge such appropriations as will protect our harbors against all foreign invasions.

B. F. LANGFORD, Chairman.
 W. W. BOWERS.
 W. O. BANKS.
 J. E. HAMILL.
 J. R. SPELLACY.

CHAS. W. FAY, Secretary.

